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ALCOHOLISM AND MARITAL CONSENT

by
© Patrick S. Morris

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ABSTRACT

In his allocutions, Pope John Paul II repeatedly recommends that behavioural sciences information be utilized in the adjudication of marriage cases. A comprehensive understand of the impact of any disorder on the individual's capacity to exchange valid consent becomes possible through the integration of psychiatric/psychological data with jurisprudence. This study integrates clinical data provided by the behavioural sciences on alcoholism with jurisprudence.

Both the behavioural sciences and jurisprudence insist on an alertness to individual differences. For some individuals, alcoholism involves a progression from use to abuse to dependence (psychological and/or physical). Progression, however, is not inevitable in all cases. Alcohol abuse, for example, as opposed to acute intoxication and dependence can more seriously interfere with internal freedom in some as compared with others. On the other hand, the situation may become more definitive when it is a question of physical dependence, tolerance and withdrawal symptoms. Under these conditions the probability is greater that there is Central Nervous System involvement and/or damage. When there is Central Nervous System damage, cognitive, affective and motivational functioning involved in the performance of human acts are likely to be impaired. The question is: did this particular individual have the capacity to understand and fulfill marital obligations. Both the spouse and the children have a right to an emotionally present and interpersonally capable person

Jurisprudence respects individual differences and protects the person's right to a valid marriage when it affirms that the impact of alcoholism is more significant than the disorder itself. The impact of alcoholism can be measured through its interference with cognitive, affective and motivational functioning. When these functions are seriously impaired through alcoholism (acute intoxication, abuse, dependence), there is a high probability that adjudication will result in an affirmative decision. Rotal sentences demonstrate how behavioural science information can be integrated with jurisprudential principles. Some Rotal auditors suggest that c. 1095, 1° may be the more appropriate ground for cases involving acute alcoholism. For several years, Rotal jurisprudence has investigated chronic alcoholism under lack of discretionary judgement. Incapacity to assume has been used since 1986 with increased frequency. Although there are no known cases in Rotal jurisprudence where an affirmation decision is grounded solely in alcohol abuse, such cases could be accurately investigated on the basis of c. 1095, 3°.

It is also possible to consider the adjudication of cases involving alcoholism on grounds other than c. 1095. Because dishonesty, denial and rationalisation are behaviours frequently associated with alcoholism and are reflective of the individual's level of intrapersonal integration, cc. 1097, 1098 and 1102 may have particular relevance either as primary or as subordinated grounds. Therefore, a comprehensive approach to a case may include not only the grounds mentioned in c. 1095 but also other grounds. A comprehensive approach to a case may also require the imposition of a *vetitum*, the appointment of an advocate, procurator and curator, and the provision of pastoral care by tribunal personnel and other ministers.

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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>CLSA</i>	<i>Proceedings Proceedings of the Canon Law Society of America</i>
<i>CLSGBI</i>	<i>Newsletter Canon Law Society of Great Britain and Ireland Newsletter</i>
<i>DE</i>	<i>Il diritto ecclesiastico</i>
<i>EIC</i>	<i>Ephemerides iuris canonici</i>
<i>IC</i>	<i>Ius canonicum</i>
<i>IE</i>	<i>Ius Ecclesiae</i>
<i>ME</i>	<i>Monitor ecclesiasticus</i>
<i>Periodica</i>	<i>Periodica de re morali canonica liturgica</i> <i>Periodica de re canonica</i>
<i>QSR</i>	<i>Quaderni studio rotale</i>
<i>RDC</i>	<i>Revue de droit canonique</i>
<i>REDC</i>	<i>Revista española de derecho canónico</i>
<i>SC</i>	<i>Studia canonica</i>
<i>SRR Dec</i>	<i>Sacrae Romanae Rotae, Decisiones seu sententiae (1908-1980);</i> <i>Apostolicum Rotae Romanae Tribunal, Decisiones seu sententiae (1981-</i> <i>1992); Rotae Romanae Tribunal, Decisiones seu sententiae (1993-)</i>

INTRODUCTION

Remember that we deal with alcohol – cunning, baffling, powerful! Without help it is too much for us. But there is One who has all power – that One is God. May you find Him now!¹

The powerful nature of alcoholism is obvious from the devastation that it causes in the lives of many individuals. Its cunning and baffling characteristics are reflected in the alcoholic's continued use of the defense mechanisms of denial and rationalization in the presence of obvious signs of deterioration. Alcoholism has also proven to be baffling for researchers. It has frustrated scientists from various disciplines in their attempts to formulate a universally acceptable definition and a comprehensive and integrated theory. These formulations may not be possible as long as scientists continue to ignore the spiritual nature of the human being as a significant element and the fact that alcoholism wreaks havoc on spiritual development.² The most comprehensive understanding of alcoholism categorizes it as a physical, mental (emotional) and spiritual disorder. The above quotation emphasizes the spiritual component and implies that recovery involves spiritual healing. This healing is possible because one seeks God and God responds.

The complexities of the physical and mental aspects of alcoholism have been challenging to behavioral scientists. Nevertheless, the findings made available by them do speak to the nature of alcoholism and do provide canonists with valuable information for the

¹*Alcoholics Anonymous*, New York, NY, Alcoholics Anonymous World Services, Inc., 1976, pp. 58-59.

²S. Carroll, "Spirituality and Purpose in Life in Alcoholism Recovery," in *Journal of Studies on Alcohol*, 54 (1993), pp. 297-301.

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decision-making process.³ The integration of this information, provided by the behavioral sciences, with jurisprudential aspects of alcoholism is, therefore, the major objective of this study. The method constitutes a scientific dialogue between the behavioral sciences, particularly psychiatry/psychology, and canon law. The behavioral sciences will be the sources used for clinical information on alcoholism, for criteria for identification, for understanding alcohol abuse and for explanations of alcohol dependency. Canon law, particularly Rotal jurisprudence, will supply the principles for the valid celebration of marriage as a natural and sacramental reality. The results of psychiatric/psychological research will be integrated with canonical principles. The criteria embedded in law, jurisprudence, and John Paul II's 1987 and 1988 allocutions to the Roman Rota will guide the process of integration.

Although there is an abundance of clinical information on alcoholism, there is only one major study, in the English language, investigating the impact of alcoholism on marriage consent.⁴ The focus of this study was the negative consequences of alcoholism for the community of life and love and for parenting. It was completed prior to the promulgation of the 1983 Code and prior to major developments, in recent years, in canonical doctrine and jurisprudence. Since this study was published, there have been several Rotal decisions on

³See JOHN PAUL II, Allocution to the Roman Rota, 27 January 1997, in *Origins*, 26 (1996-1997), p. 598. In this allocution, as in several others, the Pope refers to the appropriate use of information contained in the human sciences.

⁴E. F. WEIST, *Alcoholism and Marriage*, Rome, Pontificia Universita Lateranense, 1977, 106p.

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alcoholism and marital consent.

In order to achieve the objectives of the present study, Chapter One will focus on concepts commonly used in the study of alcoholism, definitions and criteria for the diagnoses of intoxication, abuse, dependence and withdrawal. Clinical characteristics are also important because they can indicate a level of deterioration possibly incompatible with the capacity to exchange valid consent. A discussion of the various phases, types and states of alcoholism has clinical value because these descriptive categories allow for a comparison of an individual's observable behavioral pattern with previously observed behavioral clusters and, thus, severity of involvement with alcohol can be assessed. In any attempt to understand the nature of a disorder, etiological factors organized and clarified within theories/models, warrant consideration. Treatment approaches are grounded in and are the practical application of theory and etiology. These various aspects of and approaches to alcoholism will be discussed in an attempt to clarify its nature and to present a framework for decisions regarding the alcoholic's capacity/incapacity for valid consent.

The alcoholic's capacity/incapacity for marital consent can only be assessed by evaluating the impact that alcoholism has on his/her personality and the functions determined by personality structure and integration. Chapter Two will, therefore, summarize the available research that discusses the alcoholic's affective, cognitive and motivational functioning. Since marriage involves the development of a social unit (described as an intimate community of life and conjugal love), and a relationship (specifically marital) and the application of parenting skills, the consequences of alcoholism for these rights/obligations will be included in the

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subject matter of Chapter Two.

Gaudium et spes clearly expresses the Church's teaching on the nature of marriage, its constitutive elements and its rights and obligations.⁵ In this Pastoral Constitution, marriage is described as "an intimate community of life and love" created by the "irrevocable personal consent" of the partners (*GS*, n. 48). It has as its purposes the good of the spouses and "the procreation and education of the offspring" (*GS*, n. 48). The achievement of these purposes demands "total fidelity from the spouses and requires an unbreakable unity between them" (*GS*, n. 48). The legislator has substantially integrated this conciliar teaching in cc. 1055 and 1056 of the revised Code.⁶

Marriage as a natural reality and sacramental means of salvation (c. 1055) is accessible to all "who are not prohibited by law" (c. 1058). The law, in this context, includes civil law, ecclesiastical law, divine positive and natural law. The Church has an obligation to protect this natural right and to provide accessibility to the sacrament through legislation that will ensure the valid exchange of consent. In order to fulfill this obligation the Church has formulated laws which embody the realities of life that exclude valid consent. These realities

⁵SECOND VATICAN COUNCIL, Pastoral Constitution on the Church in the Modern World, *Gaudium et spes* [=GS], nn. 48-52, in *Acta Apostolicae Sedis* [=AAS], 58 (1966), p. 1067-1068. English translation adapted from A. FLANNERY(ed.), *Vatican Council II: The Conciliar and Post Conciliar Documents*, Northport, NY, Costello Publishing Company, 1986, pp. 950-955.

⁶See JOHN PAUL II, *Ad limina* Address, 17 October 1998, "How the Church Approaches Annulment Cases," in *Origins*, 28 (1998), p. 361: "The immediate purpose of the revision of the code was to ensure that it embodied the ecclesiology of the Second Vatican Council."

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include impediments of natural and/or ecclesiastical law and certain human conditions that vitiate marital consent itself. More specifically, c. 1095, expresses certain juridic incapacities that invalidate an attempted consent. Chapter Three will, therefore, focus on the nature of marriage, the nature of marital consent, the juridic incapacities of lack of sufficient “use of reason” (c. 1095, 1°), “grave lack of discretion of judgment” (c. 1095, 2°) and the extent to which alcoholism may create or intensify these incapacities.

The introduction (into the 1983 Code) of a third species of incapacity (the incapacity to assume “the essential obligations of marriage because of cause of a psychological nature”) has stimulated considerable research among canonists. Canon 1095, 3° is not totally disconnected from c. 1095, 1° and 2°. In all three species the incapacitating defect must be internal to the subject (in this sense always psychological in nature) and a disproportionality must exist between the formal object of marriage and human act requirements. The distinctiveness of c. 1095, 3° arises from the essential obligations of marriage (external to the subject) which cannot be fulfilled (and therefore cannot be assumed) because of a psychological condition inherent in the subject. Although some differences of opinion exist among canonists regarding essential obligations, the law itself concretizes a number of obligations when it refers to essential properties and essential elements (cc. 1055, §2, 1056, 1099, 1101, §2). Chapter Four will concentrate on an explanation of these essential obligations (the *bona* of marriage and sacramental dignity), the jurisprudential meaning of “psychological causes”, and the alcoholic’s capacity/incapacity to fulfill essential obligations. Since the characteristics of severity, antecedence, perpetuity and relativity of this incapacity

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are to guide the judge to an equitable and just decision, their canonical implications will be discussed in Chapter Four.

Although the Code itself does not contain a principle of precedence and the principles of jurisprudence employed in a given case are binding only on the parties involved in the case, the application of the law in inferior courts finds guidance from and inspiration in the sentences of Rotal auditors.⁷ The published Rotal sentences on marriage cases involving alcoholism, as significant components of this study, will be analyzed and included in both Chapters Three and Four.

The just and equitable application of the law and the defense of rights will frequently extend beyond adjudication grounded in c. 1095. Chapter Five will, therefore, include a discussion of: 1) Other possible grounds for the adjudication of cases involving alcoholism (cc 1097, 1098 and 1102); 2) The possible imposition of prohibitions subsequent to adjudication in cases involving alcoholism; 3) The appointment of advocates, procurators and curators for the protection of rights; 4) Pastoral issues in cases involving alcoholism.

To summarize, this study poses the following questions:

- 1) What is the nature of alcoholism and can behavioral science information facilitate the judge's decision-making process?
- 2) What are the consequences of alcoholism for the subject's personality functions

⁷See JOHN PAUL II, Allocution to the Roman Rota, 26 January 1984, in W. H. WOESTMAN (ed.), *Papal Allocutions to the Roman Rota 1939-1994*, Ottawa, Saint Paul University, 1994, p. 185: "These important determinations [of Rotal auditors], which should serve as direction and guidance to all tribunals of the particular churches...".

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and for the performance of human acts?

- 3) How may alcoholism interfere with the sufficient use of reason and the sufficient discretionary judgment requirements of c. 1095?
- 4) Does alcoholism qualify as a “cause of a psychological nature” and to what extent does it prevent the assumption of essential marital obligations?
- 5) Can cases involving alcoholism be adjudicated on grounds other than c. 1095 and is it ever necessary to impose a prohibition subsequent to adjudication?
- 6) Does the defense of rights require the appointment of advocates, procurators and curators?
- 7) What are some pastoral issues in cases involving alcoholism?

CHAPTER ONE
AN UNDERSTANDING OF ALCOHOLISM*
INTRODUCTION

Scientists, in the alcoholism field, currently utilize existent theories and models to explain the development and continuation of alcoholism. They propose defensible conceptualizations and research directions. Conceptualizations tend to provide various groups of professionals with a viable understanding of the condition of alcoholism and they are reflective of a *zeitgeist* in the evolution of research. The fact that a gestalt has not been achieved is not necessarily detrimental. Differences stimulate research efforts and alert practitioners to the complexity of alcoholism. In addition, alcoholism is inevitably conditioned by the individuality of the subject to such an extent that generalizations can be misleading. Rotal jurisprudence uniformly insists on alertness to individual differences.

Judgements formulated in marriage tribunals, however, may be subject to imprecision if judges are unaware that many controversial questions in the study of alcoholism currently remain unresolved. Some of these questions are: (1) What is alcoholism? (2) Is alcoholism a symptom or a disease or a disorder? (3) Is progression inevitable? (4) Is alcohol abuse a stage in the development of alcohol dependence? (5) Are there personality differences between individuals who drink socially and individuals who are alcohol dependent? (6) After a definitive diagnosis, must abstinence always be the goal of treatment? (7) Is it possible to revert from dependence to controlled consumption? A theme that appears to be implicit in

*Appendix Five contains definitions of behavioural science terms.

many of these questions could be expressed as follows: Is alcoholism the cause or the effect of maladjustment?¹

This chapter cannot provide definitive answers to all of these controversial questions. It is qualified in its focus. The purpose of this chapter is to present a practical and comprehensive view of alcoholism. This view may be beneficial to tribunal personnel who confront the issue of the alcoholic's capacity/incapacity to exchange valid marital consent. The question that judges are required to answer is: Was this particular alcoholic capable of valid marital consent?

In order to introduce the topic and to arrive eventually at some understanding of the alcoholic's actual capacity, it will be necessary to clarify concepts through a presentation of some common definitions. Concepts in isolation may communicate little meaning until they can be embedded in definitions. Definitions will be followed by a discussion of the categories of alcohol intoxication, withdrawal, abuse and dependency. Since alcohol dependency is frequently equated with the disorder of alcoholism, an attempt will be made to define this concept and to describe its clinical characteristics, its types and its states. Etiological factors are thought to have some impact on the choice of treatment possibilities. A brief discussion of etiological factors will, therefore, be followed by a discussion of current treatment approaches. The hypothesis of this chapter is that the ambiguity characteristic of behavioural science information on alcoholism renders it inapplicable to the judge's decision-making

¹E. KANTIZIAN, "Psychopathology, Psychodynamics and Alcoholism," in E. PATTISON and E. KAUFMAN (eds.), *Encyclopaedic Handbook of Alcoholism*, New York, Gardner Press, Inc., 1982, p. 594.

process. The response to this hypothesis will be found in the chapter's conclusions which will summarize findings possibly relevant for jurisprudence.

1.1 - Clinical aspects of alcoholism

The clinical aspects of alcoholism, delineated in the literature, encompass concepts that are distilled from observations, theories, models, research and treatment approaches. The concepts themselves seek to explain how the presence of the disorder of alcoholism reveals the individual's deviation from the norm. The challenge is, of course, to determine the extent to which the individual's behavioural pattern correlates with the concepts. Individual differences are such that a perfect correlation between the individual's behavioural pattern and any defined concept will rarely be observable. Concepts, employed in the sciences, tend to have different shades of meaning for different professionals. In addition, meanings tend to shift with changes in cultural and social conditions. It is, therefore, necessary to clarify the concepts relevant to this study.

1.1.1 - Clarification of concepts

The beliefs, values, and ideologies comprising the traditional approach to alcoholism view it as an identifiable unitary disease process. Various disease conceptualizations of alcoholism have appeared in the literature over the past fifty years.² While these authorities offer different explanations for the nature of the disorder, it is possible to distill the common themes they espouse and to outline the elements of a "traditional" approach to alcoholism.

²See E. JELLINEK, *The Disease Concept of Alcoholism*, New Brunswick, NJ, Hillhouse Press, 1960. See also S. GITLOW, "Alcoholism: A Disease," in P. BOURNE and R. FOX (eds.), *Alcoholism Progress in Research and Treatment*, New York, Academic Press, 1973, pp. 115-136.

These themes variously indicate the following: alcoholics are different from nonalcoholics; this difference either leads to or includes psychological/sociological and/or biochemical/physiological changes; these changes become part of a progressive and irreversible disease process; the disease is characterized by an inability to abstain and/or loss of control over alcohol. It has been hypothesized that the alleged differences between alcoholics and nonalcoholics are based on a psychological predisposition, an allergic alcohol reaction, or a nutritional deficiency that may or may not be genetically influenced. The traditional approach dictates that treatment must emphasize the permanent nature of the alcoholic's difference and that the disease can be arrested only by lifelong abstinence.

The models and postulates generated by the traditional view of alcoholism have been criticized over the past few decades. The problem is that, despite its widespread acceptance, the traditional approach has not received consistent empirical support. M. Keller summarizes the many studies examining differences between alcoholics and nonalcoholics and he concludes that "alcoholics are different in so many ways that it makes no difference."³ Research examining the construct of "craving," the "loss of control" hypothesis, and the "irreversibility" aspects inherent in most of the disease concepts of alcoholism has shown that these explanations do not withstand the test of empirical verification.⁴ Further, there is now evidence that, for at least some alcoholics, abstinence does not represent the only possible

³M. KELLER, "The Oddities of Alcoholics," in *Quarterly Journal of Studies on Alcohol*, 33 (1972), pp. 1147-1148.

⁴———, "On the Loss-of-control Phenomenon in Alcoholism," in *British Journal of Addiction*, 67 (1972), pp. 153-166.

treatment alternative.⁵ There is also evidence that abstinence does not necessarily indicate improvement in other areas of life.⁶

The fact that traditional concepts continue to enjoy widespread acceptance, without empirical verification, may indicate that these same concepts are valuable and useful to alcoholics in recovery and to clinicians who treat alcoholism. The failure of scientists to verify these constructs does not necessarily indicate that they misrepresent or distort reality. This failure may simply underscore the complexity of the behaviour and other phenomena generally associated with alcohol abuse and alcohol dependence. Prudence dictates that these concepts be used when applicable and with caution.

Twenty years ago Pattison, Sobell and Sobell clarified a number of concepts when they provided an integration of the current clinical and laboratory research evidence in the alcoholism field. Their conclusions continue to remain relevant. They are as follows:

1. Alcohol dependence summarizes a variety of syndromes defined by drinking patterns and the adverse physical, psychological, and/or social consequences of such drinking. These syndromes are best considered as a serious health problem.
2. An individual's use of alcohol can be considered as a point on a continuum from nonuse to nonproblem drinking to various degrees of deleterious drinking.
3. The development of alcohol problems follows variable patterns over time and does not necessarily proceed inexorably to severe or fatal stages. A given

⁵W. MILLER and G. CADDY, "Abstinence and Controlled Drinking in the Treatment of Problem Drinkers," in *Journal of Studies on Alcohol*, 38 (1977), pp. 986-1003.

⁶E. PATTISON, "Abstinence Criteria: A Critique of Abstinence Criteria in the Treatment of Alcoholism," in *The International Journal of Social Psychiatry*, 14 (1968), pp. 268-276.

set of alcohol problems may progress or be reversed through either naturalistic or treatment processes.

4. Psychological dependence and physical dependence on alcohol are separate and not necessarily related phenomena.

5. Continued drinking of large doses of alcohol over an extended period of time is likely to initiate a process of physical dependence.

6. The population of individuals with alcohol problems is multivariate; therefore, treatment intervention must be multivariate.

7. Alcohol problems typically are interrelated with other life problems, especially when alcohol dependence is long established.

8. Because of the documented strong relationship between drinking behaviour and environmental influences, emphasis should be placed on treatment procedures that relate to the drinking environment of the person.

9. Treatment and rehabilitative services should be designed to provide for continuity of care over an extended period of time. This continuum of services should begin with effective identification, triage, and referral mechanisms, extend through acute and chronic phases of treatment, and provide follow-up aftercare.⁷

1.1.2 - Definition of alcoholism

Definitions also attempt to clarify concepts. There are many different definitions of alcoholism. Differences in definitions are, understandably, the result of differences in theoretical orientation, the purpose for which the definition is formulated and the context (research or therapeutic) in which the definition is to be utilized.

The World Health Organization (WHO) had the task of producing a cross-culturally valid and universally acceptable definition. Its first report (1952) stated that the critical

⁷E. PATTISON, M. SOBELL and L. SOBELL (eds.), *Emerging Concepts of Alcohol Dependence*, New York, Springer Publishing Company, 1985, pp. 4-5.

elements for the identification of alcoholism are “the quality of psychic dependence with secondary physical dependence.”⁸ The 1965 report defined drug dependence as:

A state, psychic and sometimes also physical, resulting from the interaction between a living organism and a drug, characterized by behavioural and other responses that always include a compulsion to take the drug on a continuous or periodic basis in order to experience its psychic effects, and sometimes to avoid the discomfort of its absence. Tolerance may or may not be present.⁹

These reports were followed by an understanding of alcoholism as a syndrome (alcohol dependence syndrome) containing the following elements: narrowing of drinking repertoire, salience of drink-seeking behaviour, increased tolerance to alcohol, repeated withdrawal symptoms, relief-avoidance of withdrawal, subjective awareness of compulsion to drink, reinstatement of syndrome after abstinence.¹⁰ These elements concretize an observable behavioural pattern.

M. Keller defined alcoholism as a “psychogenic dependence on or a physiological addiction to ethanol, manifested by the inability of the alcoholic consistently to control either the start of drinking or its termination once started.”¹¹ The emphasis in this definition is on the inability to control behaviour.

⁸E. PATTISON and E. KAUFMAN, “The Alcoholism Syndrome: Definitions and Models,” in PATTISON and KAUFMAN, *Encyclopedic Handbook of Alcoholism*, p. 18.

⁹R. O'BRIEN and M. CHAFETZ, *The Encyclopedia of Alcoholism*, New York, Facts on File and Greenspring, Inc., 1991, p. 6.

¹⁰See PATTISON and KAUFMAN, “The Alcoholism Syndrome,” p. 18.

¹¹M. KELLER, “Definition of Alcoholism,” in *Quarterly Journal of Studies on Alcohol*, 21 (1960), p. 127.

The American Psychological Association (APA) publishes a series of *Diagnostic and Statistical Manuals of Mental Disorders (DSM)*. The *DSM-III* contains a category of substance use disorders classified according to severity as either substance abuse or substance dependence. The pathological use of alcohol is treated in this manner in the *DSM-III*. Since the *DSM-III* definitions of alcoholism and alcohol dependence provide very clear guidelines for the diagnosis of alcoholism, they will be quoted at length.

The essential feature of Alcohol Abuse is a pattern of pathological use of at least a month that causes impairment in social or occupational functioning.

A. Pattern of pathological alcohol use: need for daily use of alcohol for adequate functioning; inability to cut down or stop drinking; repeated efforts to control or reduce excess drinking by "going on the wagon" (periods of temporary abstinence) ... or restricting drinking to certain times of the day; binges (remaining intoxicated throughout the day for at least two days); occasional consumption of a fifth of spirits (or its equivalent); amnesic periods for events occurring while intoxicated; continuation of drinking despite a serious physical disorder that the individual knows is exacerbated by alcohol use; drinking of non-beverage alcohol.

B. Impairment in social or occupational functioning due to alcohol use: e.g., violence while intoxicated, absence from work, loss of job, legal difficulties (e.g., arrest for intoxicated behaviour, traffic accidents while intoxicated), arguments or difficulties with family or friends because of excessive alcohol use.

C. Duration of disturbance of at least one month. The essential features of Alcohol Dependence are either a pattern of pathological alcohol use or impairment in social or occupational functioning due to alcohol, and either tolerance or withdrawal. Alcohol Dependence has also been called Alcoholism.¹²

According to this APA definition, alcoholism entails physiological involvement (tolerance or withdrawal) and it is identified with alcohol dependence. This is similar to

¹²*Diagnostic and Statistical Manual of Mental Disorders (DSM-III)*, Washington, DC, American Psychological Association, 1980, pp. 169-170.

Jellinek's category of *gamma* alcoholism (described below). E. Jellinek's general definition for alcoholism is "any use of alcohol beverages that causes any damage to the individual or society or both."¹³ An equally broad and general definition is provided by D. Goodwin when he states "alcoholism is defined as a compulsion to drink alcohol, causing harm to self or others. The word compulsion puts it in the involuntary or 'disease' category."¹⁴

In a recent definition, the American Society of Addiction Medicine describes alcoholism as "a primary, chronic disease ... characterized by impaired control over drinking, preoccupation with alcohol, use of alcohol despite adverse consequences and distortions in thinking, most notably denial."¹⁵ This definition is followed by an explanation of its significant terms. Goodwin quotes the author's explanation of the definition when he states:

For example, *primary* means the disease is not a symptom of some other disease. They define disease as disabling and involuntary, associated with a common set of characteristics by which individuals "differ from the norm and which places them at a disadvantage." Impaired control means the inability to limit alcohol use. Denial includes a "range of psychological maneuvers designed to reduce awareness of the fact that alcohol use is the cause of an individual's problems rather a solution to these problems."¹⁶

M. Chafetz and H. Demone attempt to present an all-inclusive definition when they state:

... a chronic behavioural disorder manifested by undue preoccupation with alcohol to the detriment of physical and mental health; by a loss of control when drinking has begun although it may not be carried to the point of

¹³JELLINEK, *The Disease Concept of Alcoholism*, p. 35.

¹⁴D. GOODWIN, "Alcohol: Clinical Aspects," in J. LOWINSON, P. RUIZ and R. MILLMAN (eds.), *Substance Abuse: A Comprehensive Textbook*, Baltimore, MD, Williams and Wilkins, 1992, pp. 144-145.

¹⁵*Ibid.*, p. 144.

¹⁶*Ibid.*

intoxication; and by a self-destructive attitude in dealing with relationships and life situations. Alcoholism is the result of: a disturbance and deprivation in early infantile relations accompanied by related alterations in basic physiochemical responsiveness; the identification by the alcoholic with significant figures who deal with life problems through excessive use of alcohol; and socio-cultural milieu that causes ambivalence, conflict, and guilt.¹⁷

This definition is comprehensive in so far as it reflects the influence of psychological, psychoanalytic, developmental, sociological and medical theories. It is noteworthy in so far as it refrains from categorizing alcoholism directly as a disease.

These definitions (at least partially representative of the many definitions published) differ in comprehensiveness, specificity, emphasis and theoretical orientation. They bear witness to the difficult task of defining the complex entity known as alcoholism. Despite the differences, there are concepts that are common to some or all of the definitions. These concepts are: obsession, compulsion, impaired control, dependence, negative and harmful behaviours, denial, withdrawal and tolerance and environmental influences.

The simplest definition is: Individual loss of the power of choice. There is an inability to stop drinking even when this is consciously willed. Such a definition is clinically valuable (not yet empirically verified) since there is no need to become involved in legal and particular arguments about the presence or absence of alcoholism. If the individual's loss of the power of choice is a definitive element, this element clearly exists under conditions of intoxication.

1.1.3 - Alcohol intoxication

¹⁷M. CHAFETZ and H. DEMONE, *Alcoholism and Society*, New York, Oxford University Press, 1962, p. 33.

The terms “alcohol intoxication” and “acute alcoholism” are sometimes used interchangeably. This exchange in terminology can be confusing since, for many, the term “acute alcoholism” automatically conveys *delirium tremens*. Many authors distinguish between acute alcohol intoxication and chronic alcohol intoxication. Keller and McCormick describe alcohol intoxication as:

Drunkenness from the effects of alcohol in the organism; the condition of being disordered or insensible or stupefied through the action of alcohol in the organism. The characteristic signs are facial flushing, slurred speech, unsteady gait, accompanied by euphoria, increased activity, emotion and volubility. In severe alcohol intoxication there is irrational thought and marked impairment of perception and gross loss of muscular control. Anesthesia, with unconsciousness, may occur at or about a blood alcohol level of 0.4% and death at still higher blood alcohol levels.¹⁸

They then distinguish between *acute alcohol intoxication* as “severe drunkenness” and *chronic alcohol intoxication* as “a prolonged state of drunkenness maintained by repeated intake of alcohol before or soon after the metabolism of alcohol taken previously.”¹⁹ Chronic intoxication may be, therefore, a drinking pattern that is characterized by recurrent episodes of acute intoxication interrupted only by sleep to the exclusion of other activities or responsibilities. The chronically intoxicated may eat less, not go home and not go to work. Alcohol may rarely be absent from the blood or brain. During sleep, the blood alcohol level gradually diminishes and previously ingested alcohol is metabolized. Upon awakening, the individual may begin to drink until judgement, coordination, and consciousness are again disrupted. There are individual differences among those diagnosed as chronically intoxicated.

¹⁸M. KELLER and M. McCORMICK (eds.), *A Dictionary of Words About Alcohol*, New Brunswick, NJ, Rutgers Centre of Alcohol Studies, 1982, p. 146.

¹⁹*Ibid.*, p. 147.

Some may experience episodes of chronic intoxication or “binges”. Some remain sober and abstinent for long periods of time, begin drinking on certain dates (for example, birthdays) and continue until hospitalized. Many go from one binge to another with brief periods of abstinence enforced by changes in circumstances (jailed, hospitalized, confined to the home). For the purposes of this study, acute alcohol intoxication and acute alcoholism are equivalent syndromes. Keller and McCormick introduce a description of chronic alcohol intoxication, at this point in their discussion, to differentiate and to clarify their meaning of acute alcoholism. There are similarities between this description of chronic alcohol intoxication and chronic alcoholism (alcohol dependence).

According to the Keller-McCormick definition, acute intoxication has both psychological (behavioural) and physiological manifestations. Both the psychological and the physiological factors are grounded in the Blood Alcohol Level (BAL). A BAL measure, therefore, can become a reliable and valid measure of intoxication. The BAL at which a person is legally intoxicated in most jurisdictions is 80 mg of alcohol in 100 ml of blood or 0.08 percent.²⁰ An eighty kilogram man will have 60 kilograms to absorb alcohol or 60,000 grams or 60,000 millileters of fluid. One ounce of spirits contains 11,200 milligrams of alcohol. If 11,200 milligrams of alcohol is divided by 60,000 millileters of body fluid and multiplied by 100, the BAL is 18.6 or 18.6 mg per 100 ml of blood.²¹ Every ounce of spirits raises the BAL by 18.6 milligrams per 100 ml of blood. Although the percentage of body

²⁰M.C. MICHELL, “Alcohol-induced Impairment of Central Nervous System Function: Behavioural Skills Involved in Driving,” in *Journal of Studies on Alcohol* (Suppl.), 10 (1985), p. 111.

²¹*Ibid.*

weight that will absorb alcohol and the rate of alcohol metabolism vary somewhat with age, health, build and experience with alcohol, these calculations remain reliable and valid and can be adjusted to individual differences.²² Also while the BAL is rising, subjects appear intoxicated at 150 mg per 100 ml and while the BAL is falling they appear sober at 200 mg per 100 ml.²³ The diagnosis of alcohol intoxication is not dependent on the determination that an individual is legally intoxicated but rather on the effects of alcohol on the psychophysiological systems. Individuals vary in their psychophysiological responses to the BAL and, therefore, the diagnosis of alcohol intoxication will also vary somewhat from individual to individual. A single dose of alcohol, however, can be lethal due to respiratory failure. One study reported that, without intervention, an individual with a BAL of 500 mg per 100 ml will die within an hour or two and that a BAL of 300 to 400 mg per 100 ml will usually cause loss of consciousness.²⁴ Ordinarily as there is progression from 150 mg per 100 ml to 500 mg per 100 ml, there are more and more signs of psychophysiological systems involvement and a diagnosis of alcohol intoxication could be made at any point along this progression.

²²I.A. MISKY et al., "Adaptation of the Central Nervous System to Various Concentrations of Alcohol in the Blood," in *Quarterly Journal of Studies on Alcohol*, 2 (1945), p. 35.

²³Ibid.

²⁴S. KAYE and H. HAAG, "Terminal Blood Alcohol Concentration in Ninety-four Fatal Cases of Acute Alcoholism," in *Journal of American Medical Association*, 165 (1957), pp. 451-452.

The *DSM-IV* offers specific diagnostic criteria for alcohol intoxication. These criteria, similar in content to the Keller-McCormick definition, are psychological and physiological in nature. The criteria are:

A. Recent ingestion of alcohol.

B. Clinically significant maladaptive behavioural or psychological changes (e.g., inappropriate sexual or aggressive behaviour, mood lability, impaired judgment, impaired social or occupational functioning) that developed during, or shortly after, alcohol ingestion.

C. One (or more) of the following signs, developing during, or shortly after, alcohol use:

- (1) slurred speech
- (2) incoordination
- (3) unsteady gait
- (4) nystagmus
- (5) impairment in attention or memory
- (6) stupor or coma

D. The symptoms are not due to a general medical condition and are not better accounted for by another mental disorder.²⁵

For some individuals intoxication is followed by withdrawal symptoms. The fear and/or pain of withdrawal symptoms may become the stimulus or rationalization for further drinking. As the intervening periods of sleep between intoxications become progressively less restful and less recuperative, withdrawal tends to increase in severity.

1.1.4 - Alcohol withdrawal

Alcohol is a central nervous system (CNS) depressant. Chronic heavy alcohol use depresses the CNS and the CNS accommodates to the effects of alcohol. The mechanisms for accommodation are not well understood. However, G. May gives a plausible explanation

²⁵*Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)*, Washington, DC, American Psychological Association, 1994, p. 197.

in terms of changes in the neurons and in the neurotransmitters.²⁶ The modification of synaptic transmissions, in inhibitory and excitatory synapses, results in the inner subjective experience of and the external behavioural manifestations associated with drinking. The neuronal changes that occur because of the presence of alcohol in the organism are, at least, partially responsible for withdrawal symptoms.²⁷ When the depressant is eliminated, there is a rebound effect in the form of hyperactivity with the withdrawal symptoms possibly ranging from anxiety and tremulousness to hallucination and convulsions.

M. Keller and M. McCormick describe the alcohol withdrawal syndrome as

A complex of symptoms, ranging from hangover to *delirium tremens*, often occurring in severe forms when alcohol intake is stopped after a prolonged bout, sometimes beginning when the blood alcohol concentration is allowed to decline during a bout, and sometimes manifested in mild forms after a brief session of heavy drinking or after a single intake of a large quantity of alcohol. The symptoms occur in variable combination and may include tremulousness, psychomotor and autonomic hyperactivity, gastric distress, headache, fever, sweating, hypertension, hyperreflexia, nystagmus, seizures, hallucinations. The severity and multiplicity of the symptoms may depend on the blood alcohol levels maintained during the bout, on the duration of the bout, and on the frequency of bouts, all of which presumably reflect the severity of the deprivation when alcohol intake is interrupted. They may be influenced also by other internal or environmental conditions.²⁸

Alcohol withdrawal can be fatal. The physiologically dependent drinker must continue to drink to prevent the occurrence of withdrawal symptoms. At some point in time, the choice may become withdrawal symptoms or death. The precise pattern of withdrawal

²⁶G. MAY, *Addiction and Grace*, New York, Harper Collins Publishers, 1988, pp. 64-68.

²⁷*Ibid.*

²⁸See KELLER and MCCORMICK, *A Dictionary of Words About Alcohol*, p. 272.

symptoms cannot be predicted, with accuracy, because of the complexity of the interactions between involved variables. However, it seems reasonable that the probability of a serious withdrawal reaction would increase with an increase in the duration of a "binge" and the quantity consumed. Nutritional status, age, and a history of previous difficulties during alcohol withdrawal all appear to have some prognostic significance. Although mild withdrawal symptoms may occur after a few days of steady drinking, serious withdrawal symptoms are not common until ten drinks per day have been consumed for ten days.²⁹

Withdrawal symptoms may begin several hours to several days after the last drink. They tend to peak between the second and fourth days and they may abate within a week. There are three recognizable (and progressive in severity) stages during withdrawal. Fortunately, most withdrawals do remain at the first stage and do not progress to the third stage. The first and the mildest stage is characterized by tremulousness, restlessness, appetite loss, insomnia, anxiety, and intense feelings of apprehension. Pulse and heartbeat are rapid. These reactions cause discomfort but they are not, in themselves, dangerous. The danger is that the individual will consume more alcohol to dispel the discomfort.³⁰ The second stage is characterized by an intensification of symptoms. Tremors, anxiety and dread are more severe. Pulse, heart rate, respiration and blood pressure continue to elevate. The individual may experience hallucinations which, in the absence of other complications, are not symptomatic of psychoses because an orientation to time, place and person remains.

²⁹R. BUTZ, "Intoxication and Withdrawal," in N. ESTES and M. HEINEMANN (eds.), *Alcoholism: Development, Consequences, and Intervention*, St. Louis, MO, C.V. Mosby, 1986, p. 103.

³⁰*Ibid.*, p. 105.

Hallucinations and grand mal convulsive seizures are a physiological rebound phenomenon. Prolonged excessive alcohol abuse can lead to epilepsy but grand mal seizures during withdrawal are not usually prognostic of epilepsy.³¹ The third and most severe stage of withdrawal is known as *delirium tremens* (*Dts*). During this stage the alcoholic enters a state of abject terror because hallucinations are now persecutory and tactile (as well as visual and auditory) with small crawling animals. A defective orientation to reality, confusion, paranoia, nausea, vomiting, diarrhea and excessive perspiration are all common. Without restraints, the individual may be injurious to self or others.³²

The criteria for the actual diagnosis of withdrawal from alcohol have been distilled and are summarized for convenience in the *DSM-IV*.

1.1.4.1 - Diagnostic criteria for alcohol withdrawal

The *DSM-IV* provides a summary of alcohol withdrawal symptoms in its diagnostic criteria as follows:

- A. Cessation of (or reduction in) alcohol use that has been heavy and prolonged.
- B. Two (or more) of the following, developing within several hours to a few days after Criterion A:
 - (1) autonomic hyperactivity (e.g., sweating or pulse rate greater than 100)
 - (2) increased hand tremor
 - (3) insomnia
 - (4) nausea or vomiting
 - (5) transient visual, tactile, or auditory hallucinations or illusions
 - (6) psychomotor agitation
 - (7) anxiety

³¹Ibid.

³²Ibid., p. 106.

(8) grand mal seizures

C. The symptoms in Criterion B cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.

D. The symptoms are not due to a general medical condition and are not better accounted for by another mental disorder.³³

Some individuals may never receive a diagnosis of alcohol intoxication or experience withdrawal symptoms and yet be abusive of alcohol.

1.1.5 - Alcohol abuse

Alcoholics Anonymous makes a clear distinction between alcohol use and alcohol abuse by utilizing the concept of “loss of control” (the inability to stop drinking after the first drink).³⁴ When an individual arrives at the level where the first drink is inevitably followed by more, he is no longer an alcohol user but an alcohol abuser.

From an empirical viewpoint, it may be dangerous and misleading to base the distinction between alcohol use and alcohol abuse on the “loss of control” concept. It assumes that exposure to one drink of alcohol will cause, in the alcoholic, an uncontrollable craving to drink more and more thereby absolving him/her from responsibility for subsequent behaviour. In addition, not all individuals who abuse alcohol have lost control. Since the time it was proposed, the “loss of control” concept has never received significant experimental support. In fact, most research has disconfirmed the basic notion.³⁵ Laboratory

³³See *DSM-IV*, pp. 198-199.

³⁴See *Alcoholics Anonymous*, pp. 21, 24, 41, 42.

³⁵R.E. VUCHINICH and J.A. TUCKER, “Contributions from the Behavioural Theory of Choice to an Analysis of Alcohol Abuse,” in *Journal of Abnormal Psychology*, 97 (1988), pp. 181-195.

studies have repeatedly shown that alcoholics are perfectly capable of moderating intake and virtually never lose control.³⁶ Jellinek did not use the loss of control concept to distinguish between alcohol use and abuse.

For Jellinek, “loss of control” ushers in the *crucial* phase of alcoholism and it is highly characteristic of *gamma* alcoholism.³⁷ Once “loss of control” emerges for the individual, the disease of alcoholism is clearly present. Ironically, Jellinek’s explanation of “loss of control” is a behavioural explanation rather than a disease explanation. He noticed that alcoholics who had developed physical dependence on alcohol often experienced withdrawal symptoms while they were drinking and showed tolerance to the pleasurable effects of alcohol. He suggested that “loss of control” was merely excessive drinking in an attempt to alleviate withdrawal symptoms (negative reinforcement) and to achieve euphoria (positive reinforcement):

The inability to stop after one or two glasses seems to be characterized by minor withdrawal symptoms in the presence of alcohol in the blood stream and the failure to achieve the desired euphoria for more than a few minutes. These symptoms explain superficially the behaviour observed in the so-called loss of control.³⁸

Jellinek’s behavioural explanation serves to emphasize the importance of a behavioural approach for an understanding of alcohol abuse. The most significant factor common to all individuals diagnosed as alcoholic is that they drink too much. The range of possible etiological variables (physiological, psychological and sociocultural) is vast. To add to the

³⁶N.K. MELLO and J.H. MENDELSON, “Drinking Patterns During Work-contingent and Non-contingent Alcohol Acquisitions,” in *Psychosomatic Medicine*, 34 (1972), pp. 139-164.

³⁷See *The Disease Concept of Alcoholism*, pp. 37-38.

³⁸See *ibid.*, pp. 146-147.

complexity, these variables are undoubtedly interactive. It is highly probable that there are multiple patterns of use, misuse and abuse, and that dependent upon outcome and the environment, the pattern could be labelled addiction.³⁹ C. Cloninger, M. Bohman and S. Sigvardsson state that "alcohol abuse is a heterogeneous set of behaviours that includes any pattern of ethyl alcohol intake that causes medical and social complications."⁴⁰ This broad and somewhat vague definition focuses on maladaptive behaviours as diagnostic for alcohol abuse. It does draw attention to the significance of concrete and measurable behaviours for accurate distinctions and diagnoses.

Keller and McCormick state that alcohol abuse is the

Intake of alcohol-containing beverage in a quantity or in a manner that evokes disapproval. Sometimes used pejoratively, sometimes ambiguously in place of alcohol addiction, alcohol dependence, alcohol intoxication, alcohol misuse, alcoholism, deviant drinking, drunkenness, excessive drinking, habitual excessive drinking, problem drinking, and with possible other meanings or to avoid commitment to a specific meaning or from uncertainty about the nature of the behaviour or condition thus labelled.⁴¹

It is obvious from this definition that the distinction between alcohol use and alcohol abuse has not always been clear. What has constituted alcohol abuse has varied, throughout recorded history, because social norms determined, at least in part, what was considered to

³⁹S.W. SADAVA, "Problem Behaviour Theory and Consumption and Consequences of Alcohol Use," in *Journal of Studies on Alcohol*, 46 (1985), pp. 392-397.

⁴⁰C. CLONINGER, M. BOHMAN and S. SIGVARDSSON, "Inheritance of Alcohol Abuse: Cross-fostering Analysis of Adopted Men," in *Archives of General Psychiatry*, 38 (1981), p. 861.

⁴¹See KELLER and MCCORMICK, *A Dictionary of Words About Alcohol*, p. 13.

be use and what was considered to be abuse.⁴² It is not surprising, therefore, that authors have emphasized the relevance of the behavioural pattern and its consequences for a diagnosis of alcohol abuse (See Appendices One and Two).

A focus on the act of drinking itself may have merit. Such a focus can be utilized to diagnose intoxication (as discussed above), and it also permits an operational definition of alcohol abuse to be established against a backdrop of limited, nonproblematic or responsible drinking, in terms of peak blood alcohol concentration (BAC) and absolute quantities of alcohol consumed per unit of time. The criterion suggested for *acceptable* or *responsible drinking* is use of alcohol which rarely results in BACs greater than 70 to 80 mg. per 100 ml. This means that not more than six drinks would be consumed on a single occasion and not more than eight drinks in a single day. Two levels of excessive drinking can be described and both levels have predictable results. At the first level, BACs approaching or exceeding 150 mg per 100 ml are the result of 10 or more drinks on a single occasion and a daily intake of 10 or more drinks. For many (but not all) this may mean intoxication on a daily basis. Over an extended period of time, there is a high probability that this pattern will result in injury to health, the family, other social relations and work performance. Most clinicians and researchers would agree that this constitutes abuse. At the second level, BACs of 200 to 300 mg per 100 ml are consistently reached. At this level, a BAC of zero is rarely attained and physical dependence is practically inevitable. Deteriorations in personality, the family, other social relationships, health and work are invariably present.

⁴²M. KELLER, "Problems with Alcohol: An Historical Perspective," in W.J. FILSTEAD, J.J. ROSSI and M. KELLER (eds.), *Alcohol and Alcohol Problems: New Thinking and New Directions*, Cambridge, MA, Ballinger Publishing Co., 1976, p. 9.

The approach described above is both behavioural and operational. It permits a focus on the individual's consumption patterns and the social context in which drinking occurs. Within this approach, alcohol abuse is fundamentally an individual and social problem. Such an approach clarifies the meaning of abuse and may have merit for education, prevention and treatment. A precise measure of the amount of alcohol consumed cannot always be obtained in social contexts nor does the BAC, in and of itself, refer to the possible individual and social consequences of alcohol abuse. More applicable criteria, contained in the *DSM-IV*, have practical value.

1.1.5.1 - Diagnostic criteria for alcohol abuse

The *DSM-IV*'s approach, although atheoretical, provides valuable information for an understanding of the condition of alcoholism. It describes two disorders related to alcohol use (abuse and dependence). The descriptions, grounded in the observations and opinions of psychiatrists and not necessarily empirically derived, have as their objective the facilitation of diagnosis and intervention. According to *DSM-IV* criteria, a person may be diagnosed as abusive of alcohol if he/she manifests one of four symptoms within a twelve month period related to occupational, interpersonal and legal problems. The criteria are:

- (1) recurrent alcohol use resulting in a failure to fulfil major role obligations at work, school, or home;
- (2) recurrent use of alcohol in situations where physical harm is a distinct possibility;
- (3) continued use of alcohol despite persistent or recurrent social or interpersonal difficulties caused or exacerbated by the consumption of alcohol;
- (4) recurrent alcohol-related legal problems.⁴³

⁴³See *DSM-IV*, p. 196.

These criteria focus on the impact that alcohol consumption has on significant areas of life. The criteria are, thus, both meaningful and applicable and their use will undoubtedly expose the alcoholic's propensity for denial. This approach avoids the issue of individual differences in both alcoholic intoxication and withdrawal symptoms and does not refer to physical symptoms.

Conceptions of alcohol use and alcohol abuse varied over the centuries because social norms have determined what constitutes both use and abuse. AA utilizes the concept of "loss of control" to distinguish between alcohol use and abuse. Jellinek uses the same concept as one criterion for the diagnosis of alcoholism as a disease. This concept has not yet been verified by empirical investigation. It does, however, if used with clinical sensitivity appear to have significant subjective and therapeutic value. The BAC provides a more precise and specific operational and behavioural measure that allows for a specific understanding of alcohol abuse. The *DSM-IV* criteria focus on the impact that consumption has on significant areas of the individual life. There is a high probability that, without intervention, alcohol abuse will lead to alcohol dependence for at least some individuals.

1.1.6 - Alcohol dependence

Alcohol dependence is not to be confused with dependency as a personality trait said to be characteristic of many alcoholics. The alcoholic's dependency needs, as a construct, probably originated with the emphasis that psychoanalytic theory placed on oral fixation as an etiological factor. The McCords were of the same persuasion. They too suggested that heightened dependency was a cause of alcoholism: "We believe that the confirmed alcoholic increases his intake of alcohol because detoxification satisfies his dependency urges and

obliterates reminders of his own inadequacies. We assume that his character is organized around a quest for dependency."⁴⁴ Although without scientific verification, it is possible that psychological dependence on alcohol is correlated with the personality trait dependency.

The distinction between physical and psychological dependence on alcohol is traditional. The mind-body dichotomy that this distinction presumes may become increasingly untenable as the physiological and biochemical bases of psychological functions are more thoroughly investigated. The distinction is, at the present, operational in the absence of any experimental evidence relating the two kinds of dependence.

Dependence is itself an operationally defined term. It is a state of discomfort produced by the withdrawal of alcohol from an individual who has been chronically exposed to it and who has experienced alleviation through renewed administration. The discomfort may consist of a nonspecific dissatisfaction (anxiety, irritability) that results in a desire ranging from a mild wish to an intense craving. This is psychological dependence. It may persist with variable intensity for a long period after alcohol withdrawal. The discomfort may also include a more specific set of physiological disturbances such as tremor and autonomic signs of variable intensity. This is called physiological dependence and it can persist from a few days to several weeks after alcohol withdrawal.

The biochemical and biological bases of physical dependence are not well understood. As May has suggested, the basic pathology is likely to reside in the CNS.⁴⁵ Adaptation or

⁴⁴W. MCCORD and J. MCCORD, *Origins of Alcoholism*, Stanford, CA, Stanford University Press, 1960, p. 156.

⁴⁵See MAY, *Addiction and Grace*, pp. 64-68.

cellular tolerance to the impact of alcohol as a depressant seems to be a prerequisite for alcohol dependence.

Alcohol also stimulates the microsomal ethanol oxidizing system (MEOS) enzymes, and prolonged heavy drinking results in the liver metabolizing alcohol more rapidly.⁴⁶ The continued abuse of alcohol, as it builds neuronal tolerance, stimulates more and more MEOS enzymes. The situation is analogous to that of the laboratory rat who must run faster and faster on the treadmill to receive the same reward. In advanced alcoholism (or chronic alcoholism) a point is reached where the integrity of the nervous system is compromised and tolerance to alcohol decreases. At this point liver damage may intervene causing a decrease in the rate of alcohol metabolism.⁴⁷ This loss of tolerance may be pathognomonic of chronic alcoholism and signal the eventual development of the *Wernicke-Korsokoff Syndrome*.⁴⁸

Before becoming physiologically dependent on alcohol, an individual may rely on it to relax or function with ease in social situations. When an individual cannot do something without alcohol, he/she is psychologically dependent on it.⁴⁹ Psychological dependence may or may not progress to physiological dependence but it may be indicative of a failure to deal with conflict in a more adaptive manner. A more precise definition of alcoholism and the

⁴⁶C. CLONINGER, "Neurogenetic Adaptive Mechanisms in Alcoholism," in *Science*, 236 (1987), pp. 410-416.

⁴⁷R. WILLIAMS and M. DAVIS, "Alcohol Liver Diseases: Basic Pathology and Clinical Variants," in G. EDWARDS and M. GRANT (eds.), *Alcoholism: New Knowledge and New Responses*, Baltimore, MD, University Park Press, 1977, pp. 157-178.

⁴⁸See JELLINEK, *The Disease Concept of Alcoholism*, p. 246.

⁴⁹*Ibid.*, p. 36.

distinction between physiological and psychological dependence is presented in the following section.

1.1.6.1 - Definition

M. Keller and M. McCormick equate alcohol dependence with alcohol addiction, alcoholism, and the alcohol-dependence syndrome.⁵⁰ They then describe the alcohol-dependence syndrome and distinguish between physical dependence and psychological dependence. The alcohol-dependence syndrome is described as

A concurrence of behaviours and symptoms indicative of an overwhelming need to ingest large amounts of alcoholic beverage to a degree and with a frequency that harm the ingester. The same as alcohol addiction or alcoholism. It is characterized especially by loss or impairment of control over drinking. There is a drive to obtain the gratification of intoxication, or to escape distress, by means of self-alcoholization. The repeated uncontrollable behaviour, the impairment of control in drinking, has been attributed to a learned or conditioned dependence activated by critical internal or environmental stimuli or cues, and to changes in the central nervous system consequent upon habituation or adaptation to, or injury from, large amounts of the ingested drug, often with the development of withdrawal symptoms when the need or craving for alcohol is not relieved.⁵¹

The significance of this description is that it includes both conditioning and changes in the CNS as possible etiological factors.

Physical dependence is described as:

1. Alcohol addiction.
2. A state of tissue adaptation to alcohol, primarily in the central nervous system, marked by enhanced alcohol tolerance, a requirement for the presence of alcohol in the organism to maintain homeostasis, and the development of withdrawal symptoms especially when the blood alcohol

⁵⁰See KELLER and MCCORMICK, *A Dictionary of Words About Alcoholism*, p. 91.

⁵¹Ibid.

level is allowed to decline during a drinking episode. The withdrawal syndrome is the pathognomonic sign of physical dependence.

3. A need or craving for alcohol, felt by an alcoholic during or subsequent to drinking, arising sometimes from his impaired control over drinking and sometimes from his wish to avert or alleviate the symptoms of hangover. It is presumably initiated by the repeated presence of alcohol in the organism in large amounts, which hypothetically causes a metabolic or other change in the cellular environment, and therefore may be the cause of withdrawal symptoms. Jellinek postulated a definite progression from psychological to physical dependence in *gamma* alcoholism.⁵²

In this description, "craving for alcohol" is caused by "impaired control" and the desire to avoid hangover symptoms. In any case, craving is grounded in physiological changes.

Psychological dependence is described as:

1. Overwhelming need for alcohol to relieve distress or tension, felt by an alcoholic particularly in a period of abstinence, when he seeks to ward off tension by familiar effective means, i.e., by drinking.
2. Dependence on alcohol not accompanied by withdrawal symptoms after drinking. Thought by some to be a *prodromal* stage of alcohol addiction, the latter being confirmed only when a withdrawal syndrome occurs.⁵³

These explanations suggest that conditioning (both external and internal) is responsible for etiology. The implication may be that only the physically dependent is the real alcoholic and truly addicted. This is understandable if pathology within the organism is deemed necessary to identify alcoholism as a disease. Withdrawal symptoms are the bridge connecting the entity with a disease concept of alcoholism. This approach would not necessarily exclude early developmental experiences, genetic predisposition and sociological factors as contributory etiological factors. They are not listed, however, in these explanations.

⁵²Ibid., p. 92.

⁵³Ibid., pp. 92-93.

The *DSM-IV* describes alcohol dependence as “a cluster of cognitive, behavioural, and physiological symptoms indicating that the individual continues the use of alcohol despite significant alcohol-related problems. There is a pattern of repeated self-administration that usually results in tolerance, withdrawal, and compulsive drug-taking behaviour.”⁵⁴ In this description alcoholism is caused by the misuse of alcohol. This misuse results in a cluster of cognitive, behavioural and physiological symptoms. Etiology is not considered as something external to the drinking behaviour. The cognitive symptoms could be obsessions, denial and rationalization. The behavioural symptoms, in addition to drinking, could be compulsions, aggression, violence. The physiological symptoms could be identified with withdrawal symptoms. Neither the WHO nor the *DSM-IV* states, with specificity, that the entity alcoholism is only present when there is physiological involvement. In the absence of disconfirming evidence it can be concluded that alcoholism can exist without physiological involvement and without severe withdrawal symptoms. This conclusion is supported by the *DSM-IV's* presentation of the clinical features of alcoholism.

1.1.6.2 - Clinical features

The *DSM-IV* describes the clinical features of alcoholism within its diagnostic criteria for substance dependence. The criteria for “a diagnosis of Substance Dependence can be applied to every class of substances except caffeine.”⁵⁵ The diagnostic criteria for substance dependence as applied to alcohol dependence are as follows:

⁵⁴See *DSM-IV*, p. 176.

⁵⁵*Ibid.*

A maladaptive pattern of alcohol use, leading to clinically significant impairment or distress, as manifested by three (or more) of the following, occurring at any time in the same 12-month period:

- (1) tolerance, as defined by either of the following:
 - (a) a need for markedly increased amounts of alcohol to achieve intoxication or desired effect
 - (b) markedly diminished effect with continued use of the same amount of alcohol
- (2) withdrawal, as manifested by either of the following:
 - (a) the characteristic withdrawal syndrome for alcohol
 - (b) alcohol (or a closely related) substance is taken to relieve or avoid withdrawal symptoms
- (3) alcohol is often taken in larger amounts or over a longer period than was intended
- (4) there is a persistent desire or unsuccessful efforts to cut down or control alcohol use
- (5) a great deal of time is spent in activities necessary to obtain alcohol, use alcohol, or recover from its effects
- (6) important social, occupational, or recreational activities are given up or reduced because of alcohol use
- (7) the alcohol use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by alcohol (e.g., continued drinking despite recognition that an ulcer was made worse by alcohol consumption).⁵⁶

A diagnosis of physical dependence requires the presence of criterion 1 or 2. For a diagnosis of psychological dependence only, criteria 1 and 2 must be absent.⁵⁷

The clinical features of alcoholism, as contained in these criteria, reflect the individual's psychological and physiological interactions with alcohol. The alcoholic may

⁵⁶Ibid., p. 181.

⁵⁷Ibid.

struggle against alcohol abuse, assess the negative consequences of alcohol abuse, utilize denial and rationalization in order to continue the self-destructive pattern of behaviour and only later manifest symptoms of tolerance and/or withdrawal.

Alcohol withdrawal is not experienced by every individual diagnosed as alcohol dependent. "A substantial minority of individuals who have Alcohol Dependence never experience clinically relevant levels of Alcohol Withdrawal, and only about 5% of individuals with Alcohol Dependence ever experience severe complications of withdrawal."⁵⁸ When withdrawal symptoms are experienced, their unpleasantness and intensity may motivate the alcoholic "to continue to consume alcohol" in order "to avoid or to relieve the symptoms..."⁵⁹

Although it does not discuss progression, the *DSM-IV* implicitly conceptualizes alcohol abuse as a stage in the development of alcohol dependence. As such, it conforms with "clinical and epidemiological observations which suggest that ten or more years of continuous heavy drinking are necessary before the development of Alcohol Dependence."⁶⁰

Alcohol abuse can damage any part of the organism. The damage may be direct (the impact of alcohol's effect on a particular cell, tissue, organ, or system) or it may be indirect (the consequences of alcohol's alteration of the organism's internal chemical environment). Alcohol ingestion can damage the nervous system, liver, blood, gastrointestinal system, heart muscles, reproductive organs, etc. The organism is the substratum for psychological

⁵⁸*Ibid.*, p. 195.

⁵⁹*Ibid.*

⁶⁰R. CAETANO and T. TAM, "Prevalence and Correlates of *DSM-IV* and *ICD-10* Alcohol Dependence: 1990 U.S. National Alcohol Survey," in *Alcohol and Alcoholism*, 30 (1995), p. 184.

processes. Damage to it will have consequences for psychological processes.⁶¹ The extent and irreversibility of personality and organismic damage will often determine the clinical course of alcoholism.

1.1.6.3 - Clinical course

A study of alcoholism's clinical course does not imply that progression is inevitable. G. Vaillant has clearly demonstrated, through longitudinal research, that neither progression nor sequence is inevitable or invariant and that patterns of alcohol abuse do not necessarily remain constant.⁶² Some alcoholics recover, some stabilize, some deteriorate slowly and some deteriorate rapidly. Valliant's results do not negate the fact that clinicians and researchers have observed and can observe a pattern in deterioration that sometimes increases in severity over time. The controversy surrounding progression was stimulated by the work of E. Jellinek.⁶³

Jellinek's work on alcoholism is, without doubt, seminal and a major landmark. He presents a well organized descriptive framework and not a theory or model as such. Without intervention, clinicians observe that some alcoholics may move through these stages (or some aspects of these stages) on the path to alcohol dependence. Jellinek's descriptions are labelled *pre-alcoholic, prodromal, crucial, and chronic*.⁶⁴

⁶¹See c. FALTIN, 14 December 1994, in *SRR Dec.*, 88 (1994), p. 679

⁶²G. VAILLANT, *A Natural History of Alcoholism Revisited*, Cambridge, MA, Harvard University Press, 1995, pp. 278-303.

⁶³See JELLINEK, *The Disease Concept of Alcoholism*, p. 246.

⁶⁴E. JELLINEK, "Phases of Alcohol Addiction," in *Quarterly Journal of Studies on Alcohol*, 13 (1952), p. 677.

1. The *pre-alcoholic phase* - In the beginning stage an individual may occasionally seek relief from tension through alcohol use. If he/she is ill equipped to manage tension through alternate methods, he/she may think that alcohol use is the most effective and economic means. However, over a six months to two year period tolerance for tension may decrease and daily consumption may increase alcohol tolerance.⁶⁵

2. The *prodromal phase* - This phase may last from six months to four or five years. It is characterized by alcohol palimpsests (blackouts), surreptitious drinking, preoccupation with alcohol, avid drinking, guilt feelings about drinking behaviour and avoidance of references to drinking. Blackouts reflect an increased susceptibility to alcohol.⁶⁶

3. The *crucial phase* - This phase (acute phase for Jellinek) is marked by loss of control, rationalization of drinking behaviour, social pressures, grandiose behaviour, aggressive behaviour, persistent remorse, periods of total abstinence, different patterns of drinking, loss of friends, loss of jobs, alcohol-centred behaviour, loss of outside interests, reinterpretation of interpersonal relations, marked self-pity, geographic escapes, change in family habits, unreasonable resentments, protecting the supply of alcohol, neglect of proper nutrition, first hospitalization, decrease of the sexual drive, alcoholic jealousy, and regular matutinal drinking.⁶⁷

4. The *chronic phase* - This final stage encompasses symptoms such as prolonged intoxications, ethical deterioration, impairment of thinking, alcoholic psychoses (in about 10

⁶⁵Ibid., pp. 676-677.

⁶⁶Ibid., pp. 678-679.

⁶⁷Ibid., pp. 679-682.

percent of the alcoholic population), drinking with persons below one's social level, having recourse to technical products, loss of alcohol tolerance, indefinable fears, tremors, psychomotor inhibition, obsessive drinking, vague religious desires, and a failure in the rationalization system.⁶⁸

This listing of symptoms is designed to be as inclusive as possible. It is perhaps obvious that not every individual will manifest all of these symptoms.

These descriptions are of clinical value. When progression through these phases occurs, alcohol abuse takes possession of the individual's occupational, social and personal life. The fulfilment of responsibilities in the various life areas is sacrificed to an all-consuming preoccupation with alcohol. If the clinician detects that an individual is in any particular phase an hypothesis can be formulated regarding level of deterioration and intensity of intervention.

1.1.6.4 - Types of alcoholism

In addition to the four phases or stages of alcoholism, Jellinek described five types of alcoholism.⁶⁹ These types are labelled *alpha*, *beta*, *gamma*, *delta* and *epsilon* alcoholism.

1. *Alpha* - This form of alcoholism is characterized by hangovers, blackouts, and psychological dependence. *Alpha* alcoholics may have low frustration tolerance, drink at inappropriate times, and become offensive under the influence of alcohol. They may use alcohol to bolster self-confidence, block out reality or relieve physical or emotional pain. Jellinek did not consider *alpha* alcoholism a disease because of the absence of withdrawal

⁶⁸Ibid., pp. 682-683.

⁶⁹See *The Disease Concept of Alcoholism*, pp. 36-39.

symptoms, physical dependence and progression. Some *alpha* alcoholics can deteriorate and progress to other forms of alcoholism. Other terms used for the *alpha* category are: reactive alcoholism, symptomatic alcoholism, escape drinking, problem drinking, and dyssocial drinking.

2. *Beta* - *Beta* alcoholics may experience nutritional deficiencies, cirrhosis, gastritis and other organic damage. They do not develop physical or psychological dependence, may be relatively free from psychological and social symptoms, and may manage their finances adequately. Their drinking appears to be more socioculturally and situationally determined. Some *beta* alcoholics will develop other forms of alcoholism.

3. *Gamma* - This form of alcoholism is manifested through emotional and psychological impairment, compromised social and vocational functioning, loss of control, unpredictability, progression, withdrawal symptoms and physical dependence. According to Jellinek, *gamma* alcoholism is clearly a disease.⁷⁰ It would be approximately equivalent to the *DSM-IV's* category of alcohol dependence. Other comparable terms are: essential, addictive, regressive, malignant or idiopathic.

4. *Delta* - This subcategory is characterized by physical dependence, increased tolerance, adaptive cell metabolism and withdrawal symptoms. If the *delta* alcoholic continues to consume a predetermined amount of alcohol he/she may not manifest withdrawal symptoms or loss of control.

⁷⁰Ibid.

5. *Epsilon* or periodic alcoholism is binge drinking, unpredictable and for undetermined lengths of time. The time intervals between binges may vary widely, be constant or decrease over time.

These forms of alcoholism, like the phases of alcoholism, have clinical value and are of value to judges.⁷¹ They are descriptive of levels of deterioration, of physical and psychological involvement, and of interferences in human functioning. They provide a framework within which the judge can assess level of deterioration (with assistance from experts) and apply juridic principles to arrive at moral certitude. The judge may ask: Is this level of deterioration, revealed in the subject's behavioural pattern, compatible with the exercise of discretionary judgment and/or the assumption of marital obligations? In addition to the various phases and types of alcoholism presented by Jellinek, several authors have described different alcoholic states.

1.1.6.5 - States of alcoholism

An alcoholic state is a condition of the body and/or mind associated with drinking or consequent upon alcohol abuse. The literature presents several alcoholic states. The states described here are a select sample that have relevance for this study.

1. *Acute Intoxication* - This state has been described above under the subheading "Alcohol Intoxication."

2. *Pathologic Intoxication* - This category is used to describe an extraordinary, unpredictable and intense response to alcohol. A pathologic reaction to alcohol may be

⁷¹c. FALTIN, 14 December 1994, p. 680.

characteristic of individuals with low tolerance and it may be associated with hypoglycemia, exhaustion and intense stress. The reaction may include violent behaviour, paranoid thinking and defensive behaviour and it is usually followed by exhaustion, sleep and amnesia for the episode.⁷²

3. *Wernicke-Korsakoff Syndrome* - Alcohol abuse can have far more serious consequences other than physiological dependence and withdrawal symptoms. As stated above, alcohol abuse can damage any part of the organism. The nervous system, for example, may sustain damage because of nutritional deficiency. Wernicke's syndrome and Korsakoff's psychosis are the result of a deficiency in thiamine (vitamin B₁).

Wernicke's syndrome is an acute disease characterized, in the beginning, by confusion, delirium and hyperactivity.⁷³ The individual may, then, develop double vision, become quiet and regress into a terminal stupor. Although permanent damage is likely to be sustained, if the disease is diagnosed quickly, the symptoms can be reversed through the administration of thiamine. Korsakoff's psychosis is the long-term result when Wernicke's syndrome is not diagnosed and treated early in the process. This psychosis is characterized by short-term memory deficits, unconscious confabulation to conceal memory deficits and defend against anxiety, lack of insight, impaired judgement and intellectual deterioration. With thiamine therapy the level of recovery (not at all, partial, full) is determined by the extent of liver

⁷²See KELLER and MCCORMICK, *A Dictionary of Words About Alcohol*, p. 189.

⁷³J. BRANDT and N. BUTTERS, "The Alcoholic *Wernicke-Korsakoff Syndrome* and Its Relationship to Long-Term Alcohol Abuse," in I. GRANT and K. ADAMS (eds.), *Neuropsychological Assessment of Neuropsychiatric Disorders*, New York, Oxford University Press, 1986, pp. 441-477.

damage as well as other mineral and vitamin deficiencies. Early, comprehensive and skilled intervention is crucial for the reversal of the *Wernicke-Korsakoff Syndrome*.

4. *Alcohol Dementia* - The symptoms diagnostic for this state of alcoholism are: impaired judgement, memory loss particularly for recent events, shallow and unstable emotional expression, disorientation (for time, place, persons), confusion, intellectual deterioration, carelessness in personal cleanliness, and delusions about marital infidelity. It may be due to nutritional deficiencies and the progression of the *Korsakoff syndrome*.⁷⁴

5. *Alcoholic Paresis* - Alcoholic paresis is characterized by mental deterioration with associated delusions of grandeur, emotional dullness, hallucinations, jealousy, tremors, polyneuritis, speech defects and epileptiform attacks.⁷⁵

6. *Alcoholic Paranoia* - This is a chronic condition presumed to be precipitated by many years of alcohol abuse. It appears primarily in male alcoholics and is characterized by infidelity, unreasonable jealousy and paranoid ideation.⁷⁶

The first two categories described above can be transitory and may not have an enduring impact on behaviour. The last four, however, are more permanent conditions that have significant consequence for human functioning.

⁷⁴See KELLER and MCCORMICK, *A Dictionary of Words About Alcohol*, pp. 188-189.

⁷⁵L. HINSIE and R. CAMPBELL, *Psychiatric Dictionary*, 3rd ed., New York, Oxford University Press, 1960, p. 586.

⁷⁶See KELLER and MCCORMICK, *A Dictionary of Words About Alcohol*, pp. 188-189.

Concepts, definitions, phases, types and states reflect attempts to impose cognitive structure on the observed behaviours that result from alcohol abuse. Logically, abuse can be preventable if etiology is understood. An understanding of alcohol abuse/dependence requires some consideration of etiological factors.

1.2 - Etiological factors

Etiology receives its most comprehensive treatment through the development of theories and models. Different disciplines (psychology, sociology, medicine) have developed theories or models not only in an attempt to explain the entity alcoholism but also in an effort to account for its emergence. Since every discipline has the limitation of focusing on behaviour from its own perspective, a comprehensive and integrated theory of alcoholism has yet to emerge.

A theory ordinarily accounts for a broad range of data, generates new and testable hypotheses and has heuristic power. A theory is offered as a comprehensive explanation of behaviour. Its emphasis is, therefore, on the macroscopic. A model, on the other hand, presents the initial steps in delineating the roles of specific processes in the etiology of behaviour. The emphasis tends to be microscopic. In the literature on alcoholism, the terms “model” and “theory” are often used interchangeably. This apparent confusion in terminology is symptomatic of the fact that a general integrated and satisfactory theory of alcoholism has not emerged. As Hull states:

The complexity of the variables already associated with alcohol use and abuse suggests that no single theory will be developed that will encompass the entire field... . As a consequence, the most fruitful approach to theory building in the area of alcohol use appears to be to restrict the range of phenomena to be

explained and at the same time formulate a model with empirical referents that contain hypotheses and assumptions that are subject to disproof.⁷⁷

There is, however, a general learning theory that presents a logical explanation for alcoholism and that has the capacity to integrate several minor models proposed as possible explanations of some specific aspects of alcohol abuse and/or dependence.

1.2.1 - The psychological/learning theory

Learning approaches to the study of alcoholism assume that the condition is primarily functional. Although possible organic and inherited factors are not excluded, the emphasis is on alcoholism as a product of experience. Early attempts to explain the etiology of alcoholism on the basis of learning principles are presented by Conger,⁷⁸ Ullman,⁷⁹ and Kingham.⁸⁰ These authors state that individuals learn responses when these responses are followed by rewards or punishments. Alcohol ingestion is a source of two important types of rewards. Alcohol consumption can induce feelings experienced by individuals as intensely pleasurable, thereby functioning as positive reinforcement. Alcohol can also provide temporary relief from unpleasant feelings such as guilt, tension or anxiety and thereby serve as a negative reinforcer. The individual learns that alcohol consumption is associated with

⁷⁷J. HULL, "A Self-Awareness Model of the Causes and Effects of Alcohol Consumption," in *Journal of Abnormal Psychology*, 90 (1981), p. 586.

⁷⁸J. CONGER, "Reinforcement Theory and the Dynamics of Alcoholism," in *Quarterly Journal of Studies in Alcohol*, 17 (1956), pp. 296-305.

⁷⁹A. ULLMAN, "Sociocultural Backgrounds of Alcoholism," in *Annals: American Academy of Political and Social Sciences*, 315 (1958), pp. 48-54.

⁸⁰R. KINGHAM, "Alcoholism and Reinforcement Theory of Learning," in *Quarterly Journal of Studies on Alcohol*, 19 (1958), pp. 320-330.

pleasure or relief. Alcohol consumption may then become a pattern of behaviour utilized to intensify pleasures and to avoid discomfort.

Social learning theory finds inadequate this general theory of alcoholism based on stimulus-response learning because it ascribes causality for behaviour solely to external events and because it cannot explain inconsistencies in behaviour under similar or identical circumstances. For the social learning theorist, causality is multidirectional in so far as behaviour results from both environmental influences and personal factors. The behaving individual is both an agent and a recipient. Bandura, the original proponent of social learning theory, states that an individual, as an agent, utilizes a number of cognitive capabilities such as the *symbolizing capacity*, the *forethought capacity*, *vicarious capacity*, and the *self-regulatory capacity*.⁸¹

The *symbolizing capacity* enables the individual to attach a verbal label to a group of experiences and thus develop a model that will guide future behaviour. An individual can also, utilizing *forethought capacity*, anticipate the consequences of actions and define specific goals. Informed decisions result from realistic self-knowledge and the capacity to ponder the short and long-term consequences of decisions.⁸² Within this framework, delay of gratification synchronic with maturity and with the control of alcohol consumption is

⁸¹The *forethought capacity* concept has particular relevance for the application of c. 1095. As L. WRENN states: "More specifically, contractants must be able to make at least a rudimentary assessment of the capacities of themselves and their spouse, and to decide freely that they wish to establish a perpetual and exclusive community of life with this person, a community that will involve a lifetime of fundamentally faithful caring and sharing." (See *Annulments*, Washington, DC, Canon Law Society of America, 1996, p. 26).

⁸²A. BANDURA, *Social Foundations of Thought and Action*, Englewood Cliffs, NJ, Prentice-Hall, 1986, pp. 18-21.

mediated by cognitive variables. A third cognitive mediator labelled *vicarious capacity* is the ability to observe, remember and then reproduce modelled behaviour. *Vicarious capacity*, as a construct, can predict that children who spend their developmental years in families centred around alcohol may themselves abuse alcohol as adults because of the impact of learning through modelling. *Self-regulatory capacity* is a cognitive mediator that enables the individual to control behaviour by assessing it in terms of internalized standards.

In positing the existence of cognitive capacities, social learning theory does not deny the potential impact of biological factors, as predisposing conditions, that may increase vulnerability for alcohol abuse/dependence. It does assert, however, that the organism is not passive and helpless in the presence of these predisposing conditions (genetic vulnerability). It is accepted, for example, that the male offspring of an alcoholic father have a four to five times greater rate of alcoholism than the general population.⁸³ Social learning theory admits that certain individuals may be more vulnerable for alcohol dependency because of genetic predisposition. These same individuals remain purposive and do have adaptive capacities. A different biochemical reaction to alcohol does not eliminate all freedom to choose alternatives.

⁸³D. GOODWIN, "Alcoholism and Heredity," in *Archives of General Psychiatry*, 36 (1979), p. 61. See also M. A. SCHUCKIT and T.L. SMITH, "Assessing the Risk for Alcoholism among Sons of Alcoholics," in *Journal of Studies on Alcohol*, 58 (1997), pp. 141-145.

Social learning theory's emphasis on the importance of *self-efficacy*⁸⁴ and relational thinking may also have particular conceptual relevance for an in-depth understanding of the decision-making process (e.g., marital consent). *Self-efficacy* judgements and relational thinking are estimations of one's capacity to execute effectively a course of action in cooperation with another. These estimates, in turn, will influence choices, effort expended, perseverance, performance over time, and ability to tolerate frustration. Accuracy of *self-efficacy* judgements is crucial for an understanding of one's capacity to function in the future.

Bandura described alcoholics as "people who have acquired, through differential reinforcement and modelling experiences, alcohol consumption as a widely generalized dominant response to aversive stimulation."⁸⁵ The result of individual differences in learning experiences is a wide variety of drinking styles ranging from alcoholism to dependence to abstinence. Since modelling behaviours of socializing agents (peers and family members) are imbedded in cultural norms, the study of cultural norms can also reveal reasons for the disparity in the incidence of alcoholism between cultures.

Social Learning Theory utilizes learning principles and is at the same time comprehensive. It can embrace scientific results from genetic studies and the possible insight provided by personality theories. Because it assumes that etiology is multidimensional, it has avoided premature closure and remains a viable theory for the integration of possible future diverse findings. By positing cognitive mediators for behaviour it has avoided the

⁸⁴A. BANDURA, "Self-Efficacy Mechanism in Human Agency," in *American Psychologist*, 37 (1982), pp. 122-147.

⁸⁵A. BANDURA, *Principles of Behaviour Modification*, New York, Holt, Rinehart and Winston, 1969, p. 536.

determinism that critics claim characterize strict stimulus/response theory and psychoanalytic theory. Although Pope John Paul II, in his 1987 allocution to the Roman Rota, did not refer directly to “determinism,” he did state that any theory that claims that individuals are imprisoned “by their impulses or by social conditioning,” is “decidedly irreconcilable with the essential elements of Christian Anthropology.”⁸⁶ Psychoanalytic theory tends to be at least partially deterministic in orientation.

1.2.2 - The psychoanalytic theory

There are many different conceptualizations of the etiology of alcoholism within psychoanalytic theory. All are grounded, however, in Freud’s Theory of psychosexual development. In general psychosexuality theory states that alcoholism reflects a developmental failure. Fenichel, in a concise and representative explanation of the psychoanalytic viewpoint, states: “the reasons for reverting to alcohol are either the existence of external frustrations, that is, states of misery one would like to forget and to replace by pleasurable fantasies, or internal inhibitions, that is, states in which one dare not act against the superego without such artificial help.”⁸⁷ The inability to tolerate and/or negotiate external or internal frustration precedes an escape to alcohol for the temporary alleviation of the frustration. The inability itself is assumed to be caused by “difficult family constellations” that “created specific oral frustrations in childhood.”⁸⁸ “Oral frustrations” ... give, “rise to oral

⁸⁶JOHN PAUL II, Allocution to the Roman Rota, 15 February 1987, in WOESTMAN, *Papal Allocations to the Roman Rota 1934-1994*, pp. 192-193.

⁸⁷O. FENICHEL, *The Psychoanalytic Theory of Neurosis*, New York, W.W. Norton and Company, Inc., 1945, p. 379.

⁸⁸*Ibid.*

fixations” and “oral and narcissistic pre-morbid personalities.”⁸⁹ There is a direct and physical gratification that results from sucking, swallowing and feeling the alcohol’s comforting warmth in the stomach. The ingestion of alcohol is powerfully related to the primitive preverbal experience of sucking, swallowing and being filled as a response to the experience of hunger. The gratification that results is not only a primary pleasure but also a substitute for wish fulfilment or a defence (through regression) against frustration that may result from nearly any subsequent unrealized wish. Male alcoholics have been frustrated by their mothers at an early age. They turned to their father and thus they manifest “more or less repressed homosexual tendencies.”⁹⁰ Alcoholism, therefore, can be traced to oral and homosexual unconscious impulses. More specifically, alcoholism involves fixation at or regression to one of three developmental stages.⁹¹ Fixation at the oral stage may be expressed via narcissism and the need for immediate pleasure characteristic of some alcoholics. Regression or fixation at the anal stage may result in traits such as aggressiveness and rebelliousness, also characteristic of some alcoholics. Individuals fixated at this stage may also attempt to disguise or repress their homosexual tendencies. Last, fixation at the phallic stage leads to the development of alcoholism in individuals whose superficial friendliness may mask feelings of low self-esteem, rebelliousness, and anger. E. Blum assumes that “the earlier the developmental stage at which an individual has been arrested, the more infantile his behaviour

⁸⁹Ibid.

⁹⁰Ibid.

⁹¹E. BLUM, “Psychoanalytic Views of Alcoholism: A Review,” in *Quarterly Journal of Studies on Alcohol*, 27 (1966), p. 264.

and personality, the more severe his drinking problem if he becomes an alcoholic and the poorer his prognosis."⁹²

Robert Knight was a pioneer in the psychoanalytic treatment of alcoholism. He, like other psychoanalysts, understood alcoholism as the consequence of a failure in development. In his essentially developmental typology, he describes three types (*reactive*, *essential* and *symptomatic*) of alcoholism.⁹³ The *symptomatic* alcoholic is the individual whose alcoholism is associated with severe psychopathology (e.g., schizophrenia). *Essential* alcoholics are those who never really establish themselves in life. Their adjustment, from early adolescence through adulthood, is problematic. In psychoanalytic terminology, they are fixated at the oral stage and their interpersonal relationships are at the need-gratification level. Because their development is at a primitive level, they never have and never will be capable of non self-destructive drinking. The treatment goal for them is permanent abstinence. *Reactive* alcoholics are individuals who manage some life successes. They may be economically independent and be competent in the educational, vocational and marital areas. Their addiction is understood as a reaction to life's stresses and they may have been social drinkers before becoming physiologically dependent. It is possible that some, within this category, could return to normal drinking if they learn and practise effective stress-reduction techniques. Knight's distinctions, although not comprehensive, are useful in so far as they may facilitate

⁹²Ibid.

⁹³R. KNIGHT. "The Dynamics and Treatment of Chronic Alcohol Addictions," in *The Bulletin of the Menninger Clinic*, 1 (1937), pp. 233-250.

an understanding of some alcoholics. Since his sample of subjects was limited and non-random, extrapolation remains suspect.

Psychoanalytic theory, in general, can be criticized on both conceptual and empirical grounds. Alcoholism is observed and it is then inferred that there has been fixation at or regression to an earlier stage in development. Descriptions become causal explanations and the result is interpretative circularities. It is quite possible, on the other hand, that "the physiological effects" of alcoholism "impair higher level functioning and initiate regression."⁴ Alcoholism then becomes the cause rather than the effect. Furthermore, the empirical verification of theoretical concepts such as "fixation" and "regression" is impossible. These concepts have not been observed and defined operationally. The relationships between fixation at the oral stage and alcoholism and homosexuality and alcoholism are purely assumed because, given the psychoanalytic framework, such relationships ought logically to exist. Psychoanalytic theory's greatest weakness may be that it assumes a psychic determinism. As such it undermines the processes involved in the positing of responsible free human acts. It ignores the confirmed observations that cultural and social factors are also determinants of alcoholism. Sociological Theory attempts to clarify the impact of social variables in the etiology and maintenance of alcoholism.

1.2.3 - The sociological theory

Sociological theories begin by attempting to explain the reported different rates of alcoholism in different cultures. Cross-cultural differences in alcoholism suggest that cultural and social factors cannot be ignored. An assumption is made by researchers, that if

⁴See BLUM, "Psychoanalytic Views of Alcoholism," p. 269.

social/cultural variables in any given culture are understood, then cross cultural comparisons should provide distilled insights regarding the entity of alcoholism in all cultures. It is, in a sense, a search for common causative factors that are cross-culturally applicable.

R. Bales formulated an early, comprehensive, and influential sociological theory.⁹⁵ He postulated that the prevalence of alcoholism can be explained by the interaction between the tensions that a society's members experience, the norms for alcohol use directly or indirectly communicated within a society and the alternatives (other than alcohol use) acceptable for release of tensions. J. Roebuck and R. Kessler later expanded Bales' theory by adding greater specificity to his original three interacting factors.⁹⁶ Research progressed further with H. White's attempt to integrate all previous sociological theories within a socio-environmental model.⁹⁷ White suggests that Bales' stress variable can be multidimensional and can have several sources such as insufficient basic resources as suggested by Horton,⁹⁸ social anomie as suggested by Field,⁹⁹ intergroup competition, a sense of purposelessness and a sense of

⁹⁵R. BALES, "Cultural Differences in Rates of Alcoholism," in *Quarterly Journal of Studies on Alcohol*, 6 (1946), pp. 480-499.

⁹⁶J. ROEBUCK and R. KESSLER, *The Etiology of Alcoholism: Constitutional, Psychological and Sociological Approaches*, Springfield, IL, Charles C. Thomas, 1972, pp. 139-235.

⁹⁷H. WHITE, "Sociological Theories of the Etiology of Alcoholism," in E. GOMBERG, H. WHITE and J. CARPENTER (eds.), *Alcohol, Science and Society Revisited*, New Brunswick, NJ, Rutgers Centre of Alcohol Studies, 1982, pp. 205-232.

⁹⁸D. HORTON, "Alcohol Use in Primitive Societies," in D. PITTMAN and H. WHITE, *Society, Culture and Drinking Pattern Re-examined*, New Brunswick, NJ, Rutgers Centre of Alcohol Studies, 1991, pp. 7-31.

⁹⁹P. FIELD, "A New Cross-cultural Study of Drunkenness," in PITTMAN and WHITE, *Society, Culture and Drinking Patterns Re-examined*, pp. 32-61.

alienation from community. White concretized Bales' norms for alcohol use by including motivations, general social attitudes, attitudes that condone alcohol use as a legitimate means of escape from personal problems (as outlined by Pittman),¹⁰⁰ frequency of consumption and occasions for consumption. White adopts the third component of Bales' Theory and agrees that alcohol consumption will lessen in any society that provides other alternatives for tension reduction. The final element in White's model is social control. A society that has reached a consensus on norms can exert control by defining the norms, enforcing them, labelling behaviours that are acceptable/unacceptable and isolating individuals who do not conform. It is postulated that such a society will have a lower rate of alcoholism.

A major weakness in current sociological theorizing appears to be its foundation in the tension reduction hypothesis.¹⁰¹ It is assumed that tension causing factors within a culture motivate individuals to seek tension reduction through alcohol consumption. However, investigations of the tension reduction hypothesis have indicated that, although it appears plausible, it enjoys less than consistent empirical support. Investigators have concluded that "even if alcohol is a tension reducing agent, it is a relatively ineffective one primarily because it has other effects which negate its ability to reduce tension, especially at higher doses."¹⁰²

¹⁰⁰D. PITTMAN, "International Overview: Social and Cultural Factors in Drinking Patterns, Pathological and Nonpathological," in D. PITTMAN (ed.), *Alcoholism*, New York, Harper and Row, 1967, pp. 3-20.

¹⁰¹H. CAPPELL and J. GREELEY, "Alcohol and Tension Reduction: An Update on Research and Theory," in H. BLANE and K. LEONARD (eds.), *Psychological Theories of Drinking and Alcoholism*, New York, The Guilford Press, 1987, p. 48.

¹⁰²D. MARJOT, "The Disease Concept of Alcoholism Redefined," in P. GOLDING (ed.), *Alcoholism: A Modern Perspective*, Lancaster, England, MTP Press Limited, 1982, p. 79.

If alcohol is not an effective tension reducing agent it is difficult to claim that a high rate of alcoholism in a given society is due to that society's creation of high levels of tension in its members. A second possible weakness of sociological theories is their claim that behaviours are caused by events external to the individual. There is a certain amount of latent determinism in such a position because the individual's actions are no longer perceived to be actions but rather reactions. In disowning responsibility for actions, the individual is in danger of disowning the self as an efficacious agent capable of self-determination. Sociology has made a significant contribution by illuminating the possible influences of environmental, cultural and social factors in the etiology and maintenance of alcoholism and by focussing attention on the fact that alcoholism in modern society is everybody's responsibility. The weakness of sociological theories may be avoided and their strengths utilized if a comprehensive theory (model) of alcoholism can be developed that integrates contributions from the behavioural and medical sciences.

1.2.4 - The medical theory/model

The medical model is linked to psychological/sociocultural theories through etiology. Professionals who adhere to the medical model believe that alcoholism is a progressive and sometimes fatal disease. They have an interest in accurate diagnosis and treatment. Effective treatment involves an understanding of etiology. Etiology may include an hereditary factor, defects in metabolism, psychological and sociocultural factors.

The medical model's emphasis on alcoholism as a disease implies that there would be ideally present for a diagnosis an *etiological agent*, an *etiological process*, a *lesion* and a *syndrome*. If the agent, the lesion and the syndrome are known to exist then a diagnosis can

be confirmed. Difficulties frequently arise when attempts are made to define/describe the process and the focus of the damage and, therefore, the controversy regarding whether or not alcoholism merits classification as a disease continues. What finally matters is, of course, not categorization but the actual nature of alcoholism. George Vaillant provides a satisfactory explanation. He writes, "The point of using the term *disease* is simply to underscore that once an individual has lost the capacity consistently to control how much and how often he/she drinks, then the continued use of alcohol can be both a necessary and sufficient cause of the syndrome that we label alcoholism."¹⁰³ At first glance, the above quotation may sound like "what causes alcoholism is sustained alcohol consumption." Vaillant's remarks, however, apply not to how an individual develops alcoholism initially but to the continuation of the condition of alcoholism as a malady once it is developed. Once an individual becomes an alcoholic, it can happen that all the individual has to do to continue suffering from that condition is to continue drinking, whereas the only thing that will bring recovery from that condition is to cease drinking. There does remain, therefore, a legitimate sense in which it can be stated that alcoholism has a specific identifiable cause and in which this criterion for a unitary disease is fulfilled. Vaillant is not excluding or commenting upon the multiple causative factors that may interact to develop and to maintain alcoholism.

In addition to focussing on alcoholism as a disease, physicians have been interested in the possibility that alcoholism is inherited. There are two basic questions that researchers ask about the heritability of alcoholism. The first is whether alcoholism, some forms of

¹⁰³ VAILLANT, *The Natural History of Alcoholism Revisited* p. 19.

alcoholism, a predisposition to alcoholism, or a predisposition to some forms of alcoholism is inherited. The second is: if alcoholism or a predisposition to it is at least partially inherited, what is it that is inherited? An appetite for alcohol, the enjoyment of alcohol, relief of dysphoria through alcohol, a tendency to be easily reinforced by alcohol, a capacity for alcohol, an abnormal nervous system or liver reaction to alcohol are all possibilities. Is it consumption, preference, metabolism, sensitivity, acute reaction to, tolerance, physical dependency, withdrawal, absence of some protective factor or some as yet unknown aspect of the relationship between alcohol and the alcoholic that is implicated in a predisposition to alcoholism? Observation confirms that individuals differ in their vulnerability to alcohol. There may, however, be many different vulnerabilities. There are the phenomena, after low doses of alcohol, of the alcohol flush, reddening, rapid pulse and difficulty breathing, found in very few Caucasians but in a considerable number of Orientals. This racial difference, in response to alcohol, suggests that a genetic factor is involved.

Researchers study the possible heritability of alcoholism in a variety of ways. Animal studies,¹⁰⁴ the prevalence of alcoholism in families,¹⁰⁵ twins,¹⁰⁶ relatives,¹⁰⁷ adoptees,¹⁰⁸ nonalcoholic children of alcoholics¹⁰⁹ and biological markers¹¹⁰ have been and are areas of research interest. A considerable amount of current research is focussed on the search for biological markers. A biological marker is a trait assumed to be carried by the same chromosome as the trait under study. A biological marker could cause the trait it marks but it is only necessary that the two traits be correlated. Researchers hope that some biochemical abnormality will be found that antecedes or accompanies alcoholism and thus the search for biological, neurophysiological and metabolic factors continues. If alcoholism or some species

¹⁰⁴B. SANDERS, "Withdrawal-like Signs Induced by a Single Administration of Ethanol in Mice That Differ in Ethanol Sensitivity," in *Psychopharmacology*, 68 (1980), pp. 109-113.

¹⁰⁵J. KOOPMANS and D. BOOMSMA, "Familial Resemblances in Alcohol Use: Genetic or Cultural Transmission?" in *Journal of Studies on Alcohol*, 55 (1996), pp. 19-28.

¹⁰⁶C.A. PRESCOTT et al., "Environmental and Genetic Influences on Alcohol Use in a Volunteer Sample of Older Twins," *ibid.*, 55 (1994), pp. 184-202.

¹⁰⁷R. PIHL and J. PETERSON and P. FINN, "Inherited Predisposition to Alcoholism: Characteristics of Sons of Male Alcoholics," in *Journal of Abnormal Psychology*, 99 (1990), pp. 291-301.

¹⁰⁸CLONINGER, BOHMAN and SIGVARDSSON, "Inheritance of Alcohol Abuse: Cross-fostering Analysis of Adopted Men," pp. 861-868.

¹⁰⁹S.C. WHIPPLE and E.P. NOBLE, "Personality Characteristics of Alcoholic Fathers and Their Sons," in *Journal of Studies on Alcohol*, 52 (1991), pp. 331-337.

¹¹⁰R.E. TARTER and A.I. ALTERMAN, "Neuropsychological Deficits in Alcoholics: Etiological Considerations," *ibid.*, 45 (1984), pp. 1-9.

of alcoholism is associated with a biological trait known to be inherited, then the association may provide evidence that alcoholism is inherited. It might then be possible to develop diagnostic procedures to identify individuals predisposed to alcoholism early in its development and to actualize preventive measures to short-circuit the externalization of the predisposition. However, Vaillant cautions: “the dream that some etiological factor will be identified that will allow the eradication of alcohol abuse, or even a major subtype of alcohol abuse, is likely to remain just that – a dream.”¹¹¹

At first glance, it may appear that theoretical approaches to the study of alcoholism do little to clarify etiology. However, theories/models do provide frameworks for research and observation and they do alert practitioners and researchers to the fact that alcoholism, in its etiology, is complex and as an entity is multidimensional. For some individuals conditioning, modelling, fixations at earlier stages of development, social factors and genetic predisposition may all interact to cause and maintain alcoholism as a disorder. For others one or two variables may be more significant than others. Chronic alcoholism, for example, that results from a genetic predisposition or fixation at the oral stage of development may be far less reversible than chronic alcoholism that results from conditioning. Every professional’s understanding of concepts common to several different sciences is conditioned by his/her theoretical and disciplinary perspective.

From the research discussed thus far, it may be appropriate to conclude that an individual may consume alcohol for a variety of reasons (social, psychological, cultural, medical). In some individuals this drinking may lead to a process (as yet not totally

¹¹¹See *The Natural History of Alcoholism Revisited*, p. 119.

understood) of physiological and psychological changes. These changes explain the increased tissue tolerance (with subsequent increases in the amounts of alcohol required to produce the same effect), the adaptation of cell metabolism to alcohol (evidence of which is seen in the severe withdrawal symptoms that occur when alcohol is withheld from the individual), and the pattern of impaired control and inability to abstain. Research appears to emphasize the significance of genetic factors at least in some cases. There is a high probability that any individual, however healthy and well organized, who drinks heavily and long enough will become addicted. If an addiction develops, some form of treatment is usually indicated.

1.3 - Treatment possibilities

Many types of treatments have been developed for those who want to abstain or reduce alcohol intake. It is usually agreed that the first step should be the elimination of physical dependence when it is present. This can be done in a hospital or a detoxification centre under medical supervision and until withdrawal symptoms abate. Detoxification is the medical management of withdrawal with the fewest possible consequences. All forms of detoxification involve the substitution of another sedative – hypnotic drug for alcohol and then the gradual reduction of the dosage of the substitute drug to zero. Some people can withdraw from alcohol without medication. This is not classified as medical detoxification.

When withdrawal symptoms no longer exist, antabuse may be prescribed as an external control until internal controls can be developed.¹¹² Antabuse is the trade name for the drug disulfiram. This drug blocks the conversion of acetaldehyde into acetate; then the

¹¹²A. SURGERMAN, "Alcoholism: An Overview of Treatment Models and Methods," in GOMBERG, WHITE and CARPENTER, *Alcohol, Science and Society Revisited*, pp. 269-272.

blood level of acetaldehyde, the highly toxic first metabolite of alcohol, rises. This rapidly makes the drinker acutely ill. Antabuse therapy is, therefore, a form of aversive conditioning. Antabuse treatment can be effective if used concurrently with other forms of treatment (education, counselling) with certain individuals. Research has identified the type of individual for whom antabuse has a positive indication. E. Pattison states:

The person who will positively respond to antabuse administration is one who (1) has a positive desire to abstain from alcohol, (2) tends to be obsessive – compulsive and not prone to severe depression, (3) is socially stable and socially competent, (4) is usually not highly introspective, (5) has a propensity to form dependent relationships with trusted figures, and tends to drink sporadically rather than continually and compulsively.¹¹³

Antabuse therapy should only be used as an interim measure to facilitate the introduction of a more adaptive pattern of behaviour. It seems reasonable to assume that the longer the alcoholic has been drinking the less likely the possibility of a return to social drinking. Some alcoholics may never have been normal social drinkers. The economical goal of treatment for many may be abstinence.

Some behavioural psychologists disagree with the abstinence goal and attempt to recondition individuals to drink normally by using a variety of classical conditioning, instrumental conditioning, social learning and cognitive-behavioural techniques.¹¹⁴ The

¹¹³E. PATTISON, "The Selection of Treatment Modalities for the Alcoholic Patient." in J. MENDELSON and N. MELLO (eds.), *The Diagnosis and Treatment of Alcoholism*, New York, McGraw-Hill Company, 1985, pp. 231.

¹¹⁴J. ROYCE, *Alcohol Problems and Alcoholism*, New York, Free Press, 1981, pp. 267-280. See also E. CHIAUZZI and S. LILJEGREN, "Taboo Topics in Addiction Treatment: An Empirical Review of Clinical Folklore," in *Journal of Substance Abuse Treatment*, 10 (1993), pp. 303-316. Rehabilitation programs frequently follow the Haselden model. In this model, alcoholism is viewed as a primary problem requiring treatment in its own right. The

research evidence supports the use of this approach with only a few carefully selected individuals. In practice, the reliable prediction of who will benefit from the behavioural approach is virtually impossible. The behavioural approach to treatment, in isolation, is not an economic option.

Elements of the behavioural approach can be and frequently are used in comprehensive rehabilitation programs. There are many privately funded and government funded rehabilitation programs usually twenty-eight days in length. Inpatient rehabilitation programs have several functions: (1) they extend the time during which sobriety can be established through external controls until internal controls are developed; (2) they provide an opportunity for intensive education about the nature of alcoholism; (3) they usually emphasize the disease concept of alcoholism (even if it should turn out to be a metaphor or a beneficent myth) because it facilitates recovery through the reduction of guilt; (4) they provide a safe environment for the expression of anaesthetized and repressed affect; (5) they create a therapeutic community where support can be received, self-esteem improved and isolation overcome; (6) they introduce the person to and require attendance at Alcoholics Anonymous meetings.¹¹⁵ Inpatient rehabilitation programs strongly recommend after care

focus is on the person's abuse of alcohol, the consequences of this abuse and the development of a life style that involves abstinence from alcohol. The underlying adjustment problems that render the individual incapable of intimacy, commitment and love could persist undetected and unresolved.

¹¹⁵See *Alcoholics Anonymous*, pp. 18, 30, 32. It is interesting to note that Bill Wilson, co-founder of AA and author of *Alcoholics Anonymous*, often refers to alcoholism as an "illness," a "sickness," or a "malady" but consistently avoids the term "disease."

(structured day programs, halfway houses) and attendance at Alcoholics Anonymous meetings.

Alcoholics Anonymous describes the alcoholic as an ill person, suffering from an obsession, a fatal malady, a progressive illness that is physical, mental, spiritual, emotional and self-destructive.¹¹⁶ This illness (alcoholism), that alcoholics have, is placed in remission, only through abstinence from alcohol or death. It is treated by attendance at AA meetings and through the practice of the Twelve Steps (See Appendix Three) and the Twelve Traditions (See Appendix Four).

The Twelve Steps, as recovery techniques, stress faith, confession of wrongdoing and finally a response to a spiritual awakening. The spiritual orientation of the program is obvious. AA members rigorously stress that AA is a spiritual and not a religious program. In any case, the internal process seems to involve a semi-religious conversion (despair, awareness, hope, behavioural change), removal of guilt (confession and penance), and a shift from helplessness and dependency to personal responsibility for one's actions. The stress on spirituality rather than religion apparently means that AA does not determine a member's relationship with God or the structure through which this relationship is achieved. AA offers a way of life that will enable a member to stay sober and not directly a path to salvation.¹¹⁷

The AA process, described in therapy terms, can be formulated as the abandonment of denial, the experience of hope, dependency on an authority figure (higher power),

¹¹⁶*Twelve Steps and Twelve Traditions*, Alcoholics Anonymous World Services, Inc., New York, NY, 1953, p. 123.

¹¹⁷B. WILSON, "An Analysis of Sect Development," in *American Sociological Review*, 24 (1959), pp. 3-15.

confession, making amends, continued confession, continued reinforcement of the new self-image and the refocusing of energy from drinking to altruistic action. AA members are reluctant to label the process therapeutic. They prefer to refer to the process as a process of spiritual healing. Attendance at AA meetings does not exclude other forms of intervention. AA members may be involved in outpatient treatment conducted in clinics, social agencies and in the offices of private practitioners (physicians, psychologists, social workers).

Sometimes Employee Assistance Program (EAP) counsellors will be the first to detect an alcohol problem. EAPs are short-term counselling and referral departments located in businesses, industries, labour unions and government agencies. Aside from medical intervention, outpatient treatment may take the form of individual counselling, group counselling and family counselling. Despite commonalities, different alcoholics have different needs and the same alcoholic will have different needs at different times. The prevention of relapse is thought to be dependent upon continuity of and specificity in treatment.

The treatment of alcoholism must be multifaceted because alcoholism is a biopsychosocial disorder. Treatment, in general, must be aimed at every known facet of the disorder. Treatment, in particular, must adjust itself to that facet of the disorder most influential in the individual's alcoholism. Alcoholics and their particular alcoholisms have great commonality. Alcoholics also are, as individuals, different. Treatment must be aimed at both the commonality of each alcoholic's alcoholism and its uniqueness or the way in which the disorder affects the individual seeking assistance. Alcohol abuse and dependence do affect the person's capacity to function, make decisions, relate and be responsible. The decision to

marry a particular person at a particular time has serious consequences for the parties and for society.

Conclusions

The most common theme present in the material in this chapter is an emphasis on individual differences. The condition of alcoholism is qualified by the individuality of the subject. An alertness to individual differences is also recommended by Rotal judges who study cases involving alcoholism. From a jurisprudential viewpoint, justice and equity demand that each case be evaluated on its own merits and that behavioural science information be assessed in the light of juridic principles. In their insistence on respect for individual differences the two sciences find a common ground and mutually reinforce each other.

A second theme is that for some individuals alcoholism appears to be a primary disorder and for others it is secondary or alcohol is used abusively to cope with (escape from) life's existent problems. The determination that alcoholism is primary or secondary may not be that highly significant for treatment or for judgments. However, the impact that alcoholism has on the individual functioning capacity (psychological, social, occupational) is relevant. The various categories of alcoholism, discussed in this chapter (acute, abuse, dependence), are defined/described in terms of behavioural patterns that result from alcoholism. For some individuals this behavioural pattern involves a progression from use to abuse to dependence (psychological and/or physical).

Alcohol abuse does not ordinarily result in tolerance and withdrawal symptoms. However, alcohol abuse can have serious consequences for the adjustment of the individual

to the demands of interpersonal, social and occupational life. It is, therefore, the consequences of alcohol abuse for the individual and his/her resultant behavioural pattern that determines whether or not an incompatibility exists between behaviour and responsible, informed and consistent human action.

When a physical dependence on alcohol is demonstrable the situation is less obscure. The presence of a physical dependence means that tolerance exists and withdrawal symptoms are highly probable although not inevitable in every case. Physical dependence, tolerance and withdrawal symptoms are, presumably, indications that addiction is present and that changes and/or damage may well have occurred in the organizing structures (brain, CNS) involved in the performance of human acts. When damage has occurred alcoholism can, with justification, be referred to as a disease because an agent, lesion and syndrome are present. Control may then be impaired and drinking compulsive and involuntary. When this stage is reached, interference in the functions normally attributed to the will, as a higher faculty, can be presumed. Damage to the organisms can usually be demonstrated in Jellinek's *crucial* and *chronic* phases in *beta*, *gamma*, *delta* and *epsilon* alcoholism, in the *Wernicke-Korsakoff syndrome*, in *alcohol dementia*, in *alcohol paresis* and in *alcohol paranoia*. Degree of damage and consequent interference in the performance of human acts must be assessed in all of these situations.

Although permanent damage to the organism may not be obvious with severe acute intoxication and serious withdrawal, the conditions themselves usually exclude the performance of informed and fully conscious human acts. All authors seem to agree that when these conditions are present judgment is impaired.

It is more difficult to prove the existence of impaired judgment when only psychological dependence is demonstrable. Nevertheless, such a dependence indicates that the individual is reliant upon alcohol as a coping mechanism and that he/she may not be actively involved in the development of more wholesome adjustment strategies. Psychological dependence is usually associated with a progressively more debilitating obsessive-compulsive behavioural pattern destructive of internal freedom. The level of interference with internal freedom may be such that an individual cannot assess life situations with objectivity and accuracy and cannot engage in a consistent, predictable and responsible pattern of behaviour. When such is the case, a serious *anomaly*, in the canonical sense, may exist.

Psychological dependence, loss of control and progression are useful but not unambiguous concepts. This is because they are continuum concepts. Progression and irreversibility are not inevitable for every individual who abuses alcohol. The problem is predicting individual vulnerability. Since accurate predictions are virtually impossible, it may be irresponsible for the clinician and dangerous for the client not to encourage total abstinence. If the abuse of alcohol is solely a learned response for a particular individual, controlled drinking can also become a learned response. However, if an individual is genetically predisposed and vulnerable, an attempt to establish controlled drinking may not be successful. Successful treatment programs must, therefore, be individually designed and grounded, wherever possible, in an assessment of causative factors, individual vulnerability, degree of progression and degree of impairment.

All theories of alcoholism can potentially contribute to an understanding of the disorder of alcoholism and to the development of treatment programs. Theories that exclude personal responsibility and focus on a total loss of control do not empower individuals to use available personal resources in the process of recovery. Social learning theory, because of its heuristic value and its capacity to integrate minor models of alcoholism, appears to have greater applicability for the purposes of this study. Bandura does not presume that an individual is a passive agent controlled by internal and external forces. He understands human beings as active agents who utilize cognitive processes (*symbolizing capacity, forethought capacity, vicarious capacity, self-regulatory capacity, self-efficacy capacity*) in decision-making, judgments and choices. The free and effective use of these cognitive processes increases the probability that decisions with future consequences will be realistic and accurate.

Because behaviour results from many complex and interacting variables, its study is inevitably beset with some ambiguity and differences in opinion. The study of alcoholism is not an exception. Nevertheless, the behavioural sciences do describe alcoholism's interference in responsible, personal, social and occupational functioning and in the maturational process. Alcoholics are consistently described, in the literature, as emotionally immature or as impaired in the capacity to adjust, with appropriateness, to life's demands. It can be concluded, from this literature, that acute intoxication, alcohol withdrawal and alcohol abuse with psychological dependence are, in themselves, temporary disorders that impair the individual's capacity to engage in human acts. Alcoholism with physical dependence and demonstrable organismic damage, on the other hand, can be categorized as a disease resulting in a more serious and more permanent degree of impairment. Degree of

impairment can be estimated and the judge's decision-making process can be facilitated by comparing the individual's observed behavioural pattern with behavioural science data. Degree of impairment from alcoholism to cognitive, affective, motivational and interpersonal functioning is the subject- matter for the following chapter.

CHAPTER TWO

THE IMPACT OF ALCOHOLISM ON THE ALCOHOLIC'S PERSONALITY*

INTRODUCTION

The objective of Chapter One was to discuss alcoholism as a disorder/disease to evaluate commonly utilized concepts in the field of alcoholism, to distinguish between various phases, types and states of alcoholism, to delineate theoretical/etiological contributions and to outline treatment approaches. In this chapter, the focus is on the impact of alcoholism on significant personality functions.

Observation and self-reflection indicate that there are both stability and change in human functioning across the life span. An emphasis on stability in personality structure led researchers to investigate the relationship between personality traits and many different normal and abnormal behavioural patterns. Scientists believed that a unique personality structure could be described that would pre-exist and co-exist with identifiable behavioural patterns. Research on alcoholism in the 1940s, grounded in such a zeitgeist, reflected an interest in the "alcoholic personality".¹ Although this research did not result in the discovery of a personality structure that distinguishes alcoholics from others, it did stimulate research efforts focussed on alcoholism and personality functions.²

*Appendix Five contains definitions of behavioural science terms.

¹C. LANDIS, "Theories of the Alcoholic Personality," in H. HAGGARD (ed.), *Alcohol, Science and Society*, Westport, CT, Greenwood Press, 1945, pp. 129-142.

²W.M. COX, "The Alcoholic Personality: A Review of the Evidence," in B.A. MAHER (ed.), *Progress in Experimental Personality Research*, New York, Academic Press, 1979, pp. 89-148. See also R. COSTELLO, "Alcoholism and the Alcoholic Personality," in R. MEYER (ed.), *Evaluation of the Alcoholic: Implications for Research, Theory and Treatment*, Washington, DC, National Institute on Alcohol Abuse and Alcoholism, 1981, pp. 69-70; L. GAINES and G. CONNORS, "Drinking and Personality: Present Knowledge and

There are many descriptions (definitions) of personality that differentially emphasize various modes of adaptation to life's demands.³ One of the most comprehensive of these definitions is formulated by Allport as: "the dynamic organization within the individual of the psychophysical systems that determine his characteristic behaviour and thought."⁴ According to this definition, personality is alive, changing not static, an organizational force for physical and psychological input, internal and a cause of unique behaviour and thought.

Allport claims that a mature personality is fashioned from the individual's physique, temperament and intelligence.⁵ Physique refers to structure, functions, conformity to cultural expectations and state of health of the body-image or the person's perceptions of and acceptance of his/her body. Alcoholism can, for example, interfere with bodily functions (CNS) and destroy health (Chapter One). Thus, it can directly impede the process of personality maturation. Temperament refers to the individual's characteristic emotional responsiveness and emotional investment. Stability, consistency, flexibility and appropriate affectivity are signs of personality maturation. The concept of intelligence includes cognitive

Future Trends," in L. GAINES (ed.), *Alcohol Consumption and Related Problems*, Washington, DC, National Institute on Alcohol Abuse and Alcoholism, 1982, p. 332; W.M. COX, "Personality Correlates of Substance Abuse," in M. GALIZIO and S. MAISTO (eds.), *Determinants of Substance Abuse: Biological, Psychological, and Environmental Factors*, New York, Plenum Press, 1985, p. 211.

³See H. MURRAY, *Explorations in Personality*, New York, Oxford University Press, 1938, p. 4.

⁴G. ALLPORT, *Pattern and Growth in Personality*, New York, Holt, Rinehart and Winston, 1961, p. 28.

⁵*Ibid.*, p. 54.

functions, such as perception, memory, reasoning, comprehension, judgment and the ability to plan for and project into the future.

The concept of character includes intelligence, temperament and physique and is, perhaps, more closely aligned with temperament (characteristic orientation to the environment). Maturity of character is judged present when there is evidence of self-control and when decisions and behaviors are grounded in reality and governed by internalized values. The scholastic (Thomistic) concepts of the will and will-power are not, therefore, alien to the concept of character. Within Allport's framework, character is composed of conscience (sense of responsibility to self and others, philosophy of life, internalized ethical standards, perseverance with objectives), sociability (interpersonal relationships, recognition of and respect for the rights of others), and habits (the organization of behaviors into a repetitive pattern).⁶

Character, intelligence, temperament, and physique are the essential components of personality or the dynamically organized psychophysical systems of personality. Their level of development and integration is a measure of maturity.

The choice of any state in life, in the Church, requires proportionate personality maturation. Church law insists on maturity in those who embrace consecrated life (cc. 642, 721, § 3), in those who choose celibacy with perfect continence for the sake of God's kingdom (c. 1031, § 1) and in those who marry (cc. 1095, 1057, § 2, 1055, § 1). The hypothesis of this chapter is: alcoholism interferes with the development of the affective

⁶See G. ALLPORT, *Personality: A Psychological Interpretation*, New York, Holt, Rinehart and Winston, 1937, p. 214. See also IDEM, *Pattern and Growth*, p. 345.

(temperament), cognitive (intelligence), motivational (character) and interpersonal components of personality to such an extent that capacity to function in a mature and adequate manner, is severely impaired.

2.1 - The alcoholic's capacity to function

Alcoholism can be understood as the result of a misguided search for fulfilment.⁷ An individual may believe and/or expect that the use of a substance will provide at least partial fulfilment. The blind search for fulfilment continues and so the addiction takes possession of the self. The individual is no longer the master and he/she, thereby, loses the freedom necessary for informed human acts. The personality becomes distorted and it is not surprising that acts reflective of the personality/self (affective and cognitive functioning) also are distorted. Scientists have attempted to explain the distortion of the affective and cognitive functions primarily through psychotherapy and psychological tests.

2.1.1 - Affective functioning

Do alcoholics differ from non-alcoholics in affect? Projective tests (e.g., Rorschach Inkblot Test) did not reveal significant differences between alcoholics and non-alcoholics. This type of testing was eventually abandoned in clinical investigations because the tests used were of questionable reliability and validity. With time, the *Minnesota Multiphasic Personality Inventory (MMPI)* became the test of choice for the description of the alcoholic's affective states. The *MMPI (MMPI-2)* is composed of ten clinical scales three of which

⁷MAY, *Addiction and Grace*, 1988, p. 20.

consistently differentiate alcoholics from non-alcoholics.⁸ Although there is always the possibility that a practising alcoholic will not have an elevated score on these three scales, if elevated scores are recorded, the probability is very high that alcoholism is involved. The first of these scales is the *Psychopathic Deviate (Pd)* scale.⁹ High scores on this scale are usually predictive of problematic attitudes and ways of interacting with other people. The following quotation summarizes the interpretation given for the original *Pd* scale:

The *Pd* scale deals in the main with general social maladjustment and absence of strongly pleasant experiences. These include complaints against family, feeling of having been victimized, boredom, and feelings of alienation from the group – of not being in on things. High *Pd* people are generally characterized by angry disidentification with recognized conventions; their revolt may be against family or society or both. Many high *Pds* exhibit an apparent inability to plan ahead, if not a reckless disregard of the consequences of their actions, and unpredictability is a feature of their behaviour. Usually social relationships are shallow; the individual rarely develops strong loyalties of any kind. These people sometimes make a good impression at first but on longer acquaintance their essential unreliability, moodiness, and resentment become apparent... . High *Pd* is associated with inability to profit from experience.¹⁰

Alcoholics also have elevated scores on the *Depression (D)* scale of the *MMPI-2*. High scorers on this scale may report feeling depressed, unhappy or dysphoric. They tend to be quite pessimistic about the future in general and more specifically about the likelihood of overcoming their problems and making a better adjustment. Self-deprecation and guilt

⁸A. UECKER, L. BOUTILIER and E. RICHARDSON, "Indianism and *MMPI* Scores on Men Alcoholics," in *Journal of Studies on Alcohol*, 41 (1980), pp. 351-362.

⁹*Ibid.*

¹⁰R. CARSON, "Interpretation Manual to the *MMPI*," in J. BUTCHER (ed.), *MMPI Research Developments and Clinical Applications*, New York, McGraw Hill, 1969, p. 279.

feelings are common. Behavioural manifestations may include lack of energy, refusal to speak, crying and psychomotor retardation. They also show a marked lack of self-confidence, report feelings of uselessness, give up easily under stress conditions, are over controlled, avoid confrontations and are indecisive. They tend to be described as introverted, shy, seclusive, irritable, high-strung and prone to worry.¹¹ In general, the scale is an index of self-satisfaction, comfort, security, self-evaluation and role evaluation.

The third significant scale on the *MMPI-2*, with respect to alcoholics, is the *Psychasthenia (Pt)* scale. This scale measures psychological turmoil and discomfort. High scorers tend to be anxious, tense, agitated, and to worry, to be fearful and apprehensive. They also may be introspective, obsessive-compulsive, self-critical, self-conscious, as well as having self-doubts and be lacking self-confidence. They tend to be very rigid, to have high standards for themselves and others, to be perfectionistic, to be conscientious and to feel guilty. High scorers also are often shy, do not interact well socially and may be perceived by others as dull, formal and hard to get to know. They may worry about popularity and their level of social acceptance.¹²

It is perhaps obvious that high scores on the *Pd*, *D* and *Pt* scales of the *MMPI-2* reflect the alcoholic's rebelliousness, impulsivity, pessimism, anxiety, depression and negative affect. MacAndrew factor analysed *MMPI* scores obtained from diagnosed alcoholics. Results enabled him to distinguish between two types of alcoholics labelled *primary*

¹¹J. BUTCHER, *The MMPI-2 in Psychological Treatment*, New York, Oxford University Press, 1990, pp. 35-36.

¹²*Ibid.*, p. 40.

*alcoholics and secondary alcoholics.*¹³ *Primary alcoholics* are bold, aggressive, impulsive, and hedonistic.¹⁴ *Secondary alcoholics* are characterized by fear, reticence, constricted interests, tension and depression.¹⁵ The *primary alcoholic's* abuse of alcohol could be grounded in a lack of impulse control. The *secondary alcoholic* attempts to escape from psychological distress through the abuse of alcohol. The terms "primary" and "secondary" have no significance other than the fact that *primary alcoholics* appear to be more common. MacAndrew concluded that the affective states measured by the *D* and *Pt* scales result from the general dissatisfaction, maladjustment and lack of fulfilment in interpersonal relationships measured by the *Pd* scale.¹⁶ In any event, there is a positive correlation between severity of dependence on alcohol and negative affect.¹⁷ Negative affect decreases with treatment and abstention from alcohol.¹⁸ It would appear, therefore, that negative affect is a consequence rather than a precursor of alcohol abuse.

¹³C. MACANDREW, "Alcoholic Personality or Personalities: Scale and Profile Data from the *MMPI*," in W.M COX (ed.), *Identifying and Measuring Alcoholic Personality Characteristics*, San Francisco, CA, Jossey-Bass, 1983, pp. 73-85.

¹⁴*Ibid.*

¹⁵*Ibid.*

¹⁶*Ibid.*

¹⁷H. SKINNER and B. ALLEN, "Alcohol Dependence Syndrome: Measurement and Validation," in *Journal of Abnormal Psychology*, 91(1982), pp. 199-209.

¹⁸L. MIDANIK, "Alcohol Problems and Depressive Symptoms in a National Survey," in B. STIMMEL (ed.), *Psychological Constructs of Alcoholism and Substance Abuse*, New York, Haworth Press, 1983, pp. 9-28.

It is reasonable to predict that individuals who are experiencing negative affect would also have feelings of low self-esteem and feelings of lack of self-worth. *The Baron Ego Strength Scale*, derived from the *MMPI*, was specifically designed to measure level of self-esteem.¹⁹ On this instrument, alcoholics consistently manifest feelings of low self-esteem and discrepancies between the real self and the ideal self.²⁰ Low self-esteem appears (like anxiety and depression) to be a consequence rather than an antecedent of alcohol abuse. This conclusion is warranted by the fact that therapy deliberately designed to enhance the alcoholic's self-esteem can produce positive results.²¹

Alcohol abuse results in discomfort and painful affective states. How, then, is it possible to explain the continued abuse of alcohol over an extended period of time? When alcohol is initially consumed and when the blood alcohol curve is ascending, positive affective states tend to be enhanced.²² Positive affective states are reinforcing and they dispel negative affect at least for the present. It is, therefore, understandable that individuals who are already deprived of positive experiences (high scorers on the *Pd* scale of the *MMPI-2*) would seek to alter their affective state. Also, individuals who score high on the *Pd* scale have low

¹⁹C. BENSON and S. WILSNACK, "Gender Differences in Alcoholic Personality Characteristics and Life Experiences," in COX, *Identifying and Measuring Alcoholic Personality Characteristics*, pp. 53-58.

²⁰*Ibid.*

²¹S. CURRY and G. MARLATT, "Building Self-confidence, Self-efficacy, and Self-control," in W. M. COX (ed.), *Treatment and Prevention of Alcohol Problems*, Orlando, Academic Press, 1986, pp. 117-137.

²²J. TANGENBUCHER and P. NATHAN, "The 'Wet' Alcoholic: One Drink ... then What?" in COX, *Identifying and Measuring Alcohol Personality Characteristics*, pp. 21-33.

frustration tolerance and are not usually individuals who choose to withstand the frustrations that often accompany the achievement of more lasting satisfactions. In addition, *Expectancy Theory* claims that people develop expectations that alcohol will enhance positive affect and dispel negative affect and are motivated to use alcohol regularly to achieve these anticipated results.²³

In addition to alcohol's initial affect enhancing qualities and people's expectations for alcohol, there is evidence that early drinking experiences are more reinforcing for certain individuals than for others.²⁴ This sensitivity to the impact of alcohol may be due to one predisposing factor or several interactive predisposing factors (genetic, familial, biochemical, sociocultural, psychological). In any event, as individuals continue to believe that alcohol will enhance positive affect and as they continue to consume more and more alcohol to achieve the enhancement of positive affect, tolerance develops.²⁵ A reliance on alcohol as a source of reinforcement inhibits the discovery of and the development of alternative sources of reinforcement. As excessive drinking continues, possible sources of positive affect (employment, family, friends) may be no longer available. At this stage, the individual may appear fixated, constricted and arrested in emotional development. The individual is then in

²³R.C. BOLLES, "Reinforcement, Expectancy and Learning," in *Psychological Review*, 79 (1972), pp. 394-409.

²⁴K.S. SHER and R.W. LEVENSON, "Risk for Alcoholism and Individual Differences in the Stress-response-dampening Effect of Alcohol," in *Journal of Abnormal Psychology*, 91 (1982), pp. 350-367.

²⁵D.J. ROHSENOW, "Drinking Habits and Expectancies about Alcohol's Effects for Self Versus Others," in *Journal of Consulting and Clinical Psychology*, 51 (1983), pp. 752-756.

a state of habitual negative affect (depression, anxiety, low self-esteem) and consumes alcohol in an attempt to alleviate negative affect.²⁶ However, consumption simply increases the negative affect that has permeated even sober states.²⁷

The alcoholic's affective functioning is described in the AA literature in the following quotation:

Selfishness – self-centredness! That, we think, is the root of our troubles. Driven by a hundred forms of fear, self-delusion, self-seeking, and self-pity, we step on the toes of our fellows and they retaliate. Sometimes they hurt us, seemingly without provocation ... our troubles, we think, are basically of our own making. They arise out of ourselves, and the alcoholic is an extreme example of self-will run riot, though he doesn't think so.

Resentment is the "number one" offender. It destroys more alcoholics than anything else. From it stems all forms of spiritual disease, for we have been not only mentally and physically ill, we have been spiritually sick.²⁸

Without using the same language (except for the word "resentment"), the above description from the AA literature is not unlike the previously quoted delineation of the *Pd* scale's content.

The portrait of the affective functioning of the alcoholic that emerges from both the diagnostic literature and the AA literature includes anxiety and depression and precludes satisfactory interpersonal relationships and a solid sense of self. The literature on alcoholism does not forge an explicit link between the individual's affective functioning and alcohol

²⁶C. ANESHENSEL and C. HUBA, "Depression, Alcohol Use and Smoking Over One Year: A Four-wave Longitudinal Causal Model," in *Journal of Abnormal Psychology*, 92 (1983), pp. 134-150.

²⁷*Ibid.*

²⁸*Alcoholics Anonymous*, pp. 62, 64.

intoxication, withdrawal, abuse, dependence and the various phases, types and states of alcoholism. Nevertheless, these questions can be posed. Is the alcoholic able to utilize various components of his/her personality in the service of affective functioning? How does the alcoholic function affectively when intoxicated, when in a withdrawal state, when abusing alcohol and when dependent upon alcohol? It seems reasonable to conclude that the chronically intoxicated individual is not in a position to learn how to cope with depression and anxiety and not in a position to engage in rewarding interpersonal relationship. If an individual is chronically anaesthetized with alcohol, the experiences of reality that normally allow for personality maturation, the development of self-knowledge and knowledge of the other are not processed.

A consideration of the symptoms involved in withdrawal from alcohol would suggest that an individual could not focus on anything other than recovery. The withdrawal itself is accompanied by blatant symptoms of depression and anxiety such that normal affective functioning and normal interpersonal relationships are highly improbable.

The negative impact of alcohol abuse on affect may not be as obvious as it is when intoxication and withdrawal are involved. However, when alcohol abuse is habitual, the individual becomes focused on alcohol (obtaining, having, consuming) to the exclusion of other significant areas of responsibility. Alcohol may be abused to escape, momentarily, from anxiety and depression and/or abused to escape from responsibilities. Typically, the alcohol abuser while abusing, is not required to engage in reality-bound interpersonal relationships. The alcohol abuse eliminates the frustration and pain that may accompany emotional development and the maturational process.

The individual who abuses alcohol may experience periods during which alcohol is not used to relieve distress. When an individual becomes psychologically dependent, there is a genuine need to consume alcohol to cope with any type of stress or, in other words, to cope with reality. This distancing of the self from reality through the use of a substance suggests that affective functioning may be continuously compromised. Physical dependence may indicate an even greater degree of impairment. With physical dependence, there is a compulsive element, demonstrable physical involvement and sometimes withdrawal symptoms. Commitment to occupational and social responsibilities decreases as alcohol dependence increases and consumes more areas of life. Affect may be invested in obtaining, using, and recovering from alcohol rather than in fulfilling life's obligations.

Jellinek's *crucial* and *chronic* phases of alcoholism have the most serious consequences for affective functioning. The aggressive behaviour, alcoholic jealousy, ethical deterioration and physical involvement that can accompany these phases could interfere with one's capacity to function in a normal affective manner. Of Jellinek's various types of alcoholism, *gamma* alcoholism causes the greatest impairment to emotional and psychological well-being.

The *Wernicke-Korsakoff Syndrome*, *Alcohol Dementia*, *Alcohol Paresis* and *Alcohol Paranoia* are all conditions that involve significant physical and psychological impairment. The symptoms that warrant their diagnoses impair and, in some cases, exclude normal affective functioning. Deterioration in personality integration is such that consistent and goal-directed behaviour may be limited if not non-existent.

In summary, the alcoholic's affective functioning has been studied primarily through the use of the *MMPI* and other tests derived from the *MMPI* (the *MacAndrew Alcoholism Scale* and the *Baron Ego Strength Scale*). These instruments present the alcoholic as experiencing negative affect (anxiety, depression and low self-esteem) especially after the consumption of alcohol becomes the primary means for coping with psychological distress. During initial experiences with alcohol consumption, the individual uses alcohol to enhance positive affect and to dispel negative affect. When the consumption of alcohol no longer achieves these goals (even with increased amounts), an individual's behaviour may deteriorate into alcohol abuse, alcohol dependence and/or a variety of phases, types or states of alcoholism. When this deterioration occurs, the personality is no longer an integrating and directing source for behaviour and the individual may not be able to maintain affective functioning at a normal level.

The individual's affective functioning is only one aspect of his/her behaviour that has serious consequences for interpersonal relationships. One's unique manner of understanding is interactive with affective functioning; therefore, cognitive functioning will be explored in the following section.

2.1.2 - Cognitive functioning

There are three approaches to the study of the impact of alcoholism on cognitive functioning. The first of these approaches investigates the alcoholic's cognitive/perceptual style along the dimensions of psychological differentiation, locus of control and stimulus intensity modulation. The second approach studies the effects of alcoholism on specific cognitive processes (attention, memory, ability to abstract). The third approach assumes that

the cognitions of alcoholics are inaccurate and therefore, must be modified for recovery purposes.

In the first approach, psychological differentiation refers to the degree to which people characteristically separate the self from the nonself (the field) in their cognitive/perceptual styles. Field dependent people rely on stimulus cues in the external world (the field) and field independent people rely on internal stimulus cues.²⁹ Witkin and associates discovered that alcoholics tend to be field dependent.³⁰ This finding was subsequently replicated.³¹ It may have implications for the dependence/independence conflict the AA literature claims is characteristic of most alcoholics.³² It remains debatable, however, whether field dependence precedes the onset of alcoholism and contributes to it or whether field dependence is a consequence of alcohol abuse.³³

The term "locus of control" refers to people's perception of the source of control in their lives. The source may be perceived as internal (people perceive themselves to be in

²⁹H. WITKIN, S. KARP and D. GOODENOUGH, "Dependence in Alcoholics," in *Quarterly Journal of Studies on Alcohol*, 20 (1959), pp. 493-504.

³⁰*Ibid.*

³¹G. GOLDSTEIN, "Perceptual and Cognitive Deficits in Alcoholics," in G. GOLDSTEIN and G. NEURINGER (eds.), *Empirical Studies of Alcoholism*, Cambridge, MA, Ballinger Press, 1976, pp. 115-152.

³²*Twelve Steps and Twelve Traditions*, pp. 36-39.

³³COX, "Personality Correlates of Substance Abuse," pp. 209-246.

control) or external (people perceive external agents to be the controllers).³⁴ Since alcoholics are thought to be “powerless over alcohol” and have “unmanageable” lives,³⁵ it seems intuitively apparent that they would have an external locus of control. Although alcoholics differ widely in their perceptions of control, it has been found that the average alcoholic is more externally controlled than the average non-alcoholic.³⁶

In addition to the possibility that alcoholics perceive and understand themselves and their worlds differently from others, they also appear to perceive the intensity of stimuli in a unique manner. Stimulus intensity modulation refers to the intensity with which people perceive painful or other stimuli impinging on them. Augmenters overestimate intensity and moderates estimate intensity accurately.³⁷ Alcoholics are augmenters, become less sensitive to kinesthetic stimuli after ingesting alcohol and may use alcohol to modulate the intensity of

³⁴J. ROTTER, “Generalized Expectancies for Internal Versus External Control of Reinforcement,” in *Psychological Monographs: General and Applied*, 80 (1966), pp. 15-33.

³⁵*Twelve Steps and Twelve Traditions*, p. 21.

³⁶G. ROSE, B. POWELL and E. PENICK, “Determinants of Locus of Control Orientation in Male Alcoholics,” in *Journal of Clinical Psychology*, 34 (1978), pp. 250-251. See also D. ROBSENOW, “Alcoholic’s Perceptions of Control,” in COX, *Identifying and Measuring Alcoholic Personality Characteristics*, pp. 37-48; L.S. HIRSCH, B.S. MCCRADY and E. EPSTEIN, “The Drinking-Related Locus of Control Scale: The Factor Structure with Treatment-Seeking Outpatients,” in *Journal of Studies on Alcohol*, 58 (1997), pp. 162-166.

³⁷A. PETRIE, *Individuality in Pain and Suffering*, Chicago, IL, University of Chicago Press, 1967, pp. 36-69.

unpleasant stimuli.³⁸ This use of alcohol substantiates the observation recorded earlier that alcoholics eventually use alcohol to alleviate negative affect.

In summary, the study of these concepts (psychological differentiation, locus of control and stimulus modulation) suggests that some alcoholics may perceive and understand themselves, their worlds and their relationship to their worlds somewhat differently than other people.

The second approach to the study of cognition focuses on individual cognitive processes. There is general agreement that alcohol impairs cognitive processes both acutely during intoxication and after long-term chronic abuse.³⁹ The acute effects of alcohol on learning and memory are subtle and may result from the influence of alcohol on the functions of specific neurotransmitter systems. These systems are thought to be responsible for various aspects of memory, attention and conceptualization. At a basic level, most investigators recognize that certain processes are involved in memory. First there is the acquisition of information and the formation of short-term and long-term memory. The conversion of short-term to long-term memory is often called "consolidation" of memory. Once the information

³⁸G.E. BARNES, "Clinical and Prealcoholic Personality Characteristics," in B. KISSIN and H. BEGLEITER (eds.), *The Pathogenesis of Alcoholism: Psychosocial Factors*, New York, Plenum Press, 1983, pp. 113-196.

³⁹E. PARKER, D. PARKER and T. HARFORD, "Specifying the Relationship Between Alcohol Use and Cognitive Loss: The Effects of Frequency of Consumption and Psychological Distress," in *Journal of Studies on Alcohol*, 52 (1991), pp. 366-373. See also G. AGOSTINELLI and W. MILLER, "Drinking and Thinking: How Does Personal Drinking Affect Judgments of Prevalence and Risk?" *ibid.*, 55 (1994), pp. 327-337; M.T. FILLMORE, J.L. CARSCADDEN and M. VOGEL-SPROTT, "Alcohol, Cognitive Impairment and Expectancies," *ibid.*, 59 (1998), pp. 177-179.

is stored in memory it can be recalled or retrieved. Verbal and non-verbal memory may differ in acquisition, formation, consolidation and retrieval.⁴⁰ Most studies suggest that the primary effect of alcohol is to impair the acquisition of new information with little effect on retrieval.⁴¹ The alcoholic does not learn from experiences as noted in the description of the *Pd* scale of the *MMPI*. The impairment effect of alcohol on acquisition becomes apparent when individuals are asked to learn a task while under the influence of alcohol. This impairment could be due to deficits in attention, perception, motivation or performance.

Research has demonstrated that alcohol affects at least two neurotransmitter systems that are believed to be important for memory and learning. The cholinergic system is the first of these systems.⁴² The cholinergic systems appear to play an important role in the memory necessary to perform the sequential steps of a task.⁴³ The acetylcholine within these systems, released in the brain, is sensitive to the inhibitory effects of alcohol. It can be presumed that an inhibitory effect will cause memory deficits. The N-methyl-D-aspartate (NMDA) system of the glutamate receptor is also reported to be important in learning.⁴⁴ Alcohol inhibits the function of the NMDA receptor and this also may produce cognitive deficits.⁴⁵ In addition,

⁴⁰R. LISTER, M. ECKARDT and H. WEINGARTNER, "Alcohol Intoxication and Memory," in M. GALANTER (ed.), *Recent Developments in Alcoholism*, New York, Plenum Press, vol. 3, 1987, pp. 111-126.

⁴¹*Ibid*

⁴²*Ibid.*

⁴³*Ibid*

⁴⁴*Ibid*

⁴⁵*Ibid*

there is evidence that the NMDA receptor is involved in the stimulation of epileptiform seizures and withdrawal seizures.⁴⁶ When alcohol inhibits NMDA activity, neurotoxicity increases to and beyond the threshold level for seizures.

During the past decade several studies have focused on the impact of alcohol on neuronal and neurotransmitter activity.⁴⁷ This category of research is in its early stages, but it clearly holds promise for our understanding of alcohol's influence on cognition. Neurotransmitters are involved in cognitive functions (attention, memory, ability to abstract, judgment) and, therefore, they are the substrata for human acts. The precise manner in which alcohol causes deficits via neurotransmitters in cognitive functioning and the severity of those deficits may be clarified by future research.

As stated earlier, the third approach to the study of the influence of alcoholism on cognition assumes that the alcoholic's cognitions are inaccurate and require modification for recovery. These faulty cognitions may precede and become exaggerated through alcohol abuse or they may be the consequence of alcohol abuse. For several years the experimental analyses of alcoholism were grounded in the hypothesis that alcohol consumption is an instrumental behaviour that can be sufficiently analysed within the paradigms of

⁴⁶Ibid.

⁴⁷I. GRANT, "Alcohol and the Brain: Neuropsychological Correlates," in *Journal of Consulting and Clinical Psychology*, 55 (1987), pp. 310-324. See also J. PETERSON, P. FINN and R. PIHL, "Cognitive Dysfunction and the Inherited Predisposition to Alcoholism," in *Journal of Studies on Alcohol*, 53 (1992), pp. 154-160; M. SMITH and M. OSCAR-BERMAN, "Resource-limited Information Processing in Alcoholism," *ibid.*, 53 (1992), pp. 514-518; M. SANO et al., "Acute Effect of Alcohol on Regional Cerebral Blood Flow in Man," *ibid.*, 54 (1993), pp. 369-376; W. BEATTY et al., "Problem-Solving Deficits in Alcoholics: Evidence from the California Card Sorting Test," *ibid.*, 54 (1993), pp. 687-692.

conditioning.⁴⁸ However, under the influence of Bandura's work, cognitive variables are now studied as possible mediating factors in alcoholism.⁴⁹ The simple associative processes of conditioning and cognitive processes are apparently qualitatively distinct. This conclusion is based on the fact that the amnesic deficits of Korsakoffian alcoholics are cognitive deficits and simple associative processes remain intact.⁵⁰ It is reasonable to assume that cognitive deficits, although not as dramatically obvious, precede the appearance of Korsakoff's syndrome. The gradual deterioration of cognitive processes is probably correlated with extensive and prolonged alcohol abuse. Ordinarily cognitive processes are considered to be processes such as memory, thinking, capacity to conceptualize and judgment. As stated in Chapter One, within Bandura's framework the posited constructs that presume the operation of these cognitive processes are referred to as the *symbolizing capacity*, the *forethought capacity*, the *vicarious capacity*, the *self-efficacy* evaluations.⁵¹ When deterioration occurs in the cognitive processes themselves, it is reasonable to state that deterioration will also occur in Bandura's mediating capacities.

⁴⁸N. MELLO and J. MENDELSON, "Operant Analysis of Drinking Habits of Chronic Alcoholics," in *Nature*, 206 (1965), pp. 43-46.

⁴⁹G. MARLATT and D. ROHSENOW, "Cognitive Processes in Alcohol Use: Expectancy and the Balanced Placebo Design," in N. MELLO (ed.), *Advances in Substance Abuse: Behavioural and Biological Research*, Greenwich, CT, JAI Press, 1980, pp. 159-199.

⁵⁰M. MOSCOVITCH, "Multiple Dissociations of Function in Amnesia," in L. CERMAK (ed.), *Human Memory and Amnesia*, Hillsdale, NJ, Erlbaum Publishers, 1982, pp. 337-370.

⁵¹BANDURA, *Social Foundations of Thought and Action*, pp. 18-21. See also BANDURA, "Self-efficacy Mechanism in Human Agency," pp. 122-147.

As is the case with affective functioning, the literature on alcoholism does not report studies investigating a direct link between cognitive functioning and alcohol intoxication, withdrawal, abuse, dependence and the various phases, types and states of alcoholism. However, certain conclusions appear plausible from results reported in scientific studies. First, the alcoholic's cognitive style is such that there is a reliance on external cues, a perception of external control and an inaccurate estimation of the intensity of stimuli. To what extent, therefore, can personality (the self) direct the alcoholic's cognitive processes with accuracy? The alcoholic's reliance on the external substance alcohol may reflect in part, at least, an unwillingness to utilize internal resources to fulfill consistently long-term obligations. Second, if alcohol abuse, in any of its forms, damages physical structures (neurotransmitters, cells, CNS) and these structures sustain cognitive processes and Bandura's mediating constructs, then surely there will be interferences in the capacity to assess, to deliberate, to choose, to understand, and to form judgments. Third, damage to the organism is frequently demonstrable with the more serious forms of alcoholism (withdrawal, chronic intoxication, *gamma* alcoholism, the *chronic* phase, the *Wernicke-Korsakoff syndrome*, etc.). It is reasonable to assume that a relationship would exist between degree of damage to structures and capacity/incapacity to engage in cognitive processes requisite for human acts.

The study of the relationship between cognition and alcoholism has focussed on cognitive/perceptual style, specific cognitive processes and inaccurate cognitions. Research in these areas can inform our understanding of the impact of alcohol on significant aspects of human functioning. When the organismic structures that are the substrata for cognitive

processes are damaged through alcoholism, it is reasonable to conclude that the capacity to engage in human acts (choice, deliberation, understanding, judgment, assessment) reliant upon these processes will be impaired.

2.1.3 - Motivational functioning

Multiple explanations have been posited in an attempt to understand why individuals use and abuse alcohol. Some explanations presented are: 1. the degree of reinforcement people derive from drinking is determined by their biochemical reactivity to alcohol⁵² (alcohol is more reinforcing for some than others); 2. conditioned responses to stimulus cues associated with alcohol⁵³ (some individuals have been more conditioned and are more conditionable than others); 3. expectations for the impact of alcoholism differ among individuals⁵⁴ (cognitive factors); 4. different societies and cultures have fostered different attitudes about alcohol use and abuse.⁵⁵ Despite the fact that multiple factors may influence alcohol use and abuse, the final common pathway to alcohol abuse, for the individual, is motivational. Motivation to drink may be closely tied (as we have discussed above) to people's affective states, to affective changes and to cognitive mediating factors.

⁵²B. TABAKOFF and P. HOFFMAN, "Alcohol's Interactions with Brain Opiate Receptors," in *Life Sciences*, 32 (1983), pp. 197-204.

⁵³J. CONGER, "Reinforcement Theory and the Dynamics of Alcoholism," in *Quarterly Journal of Studies on Alcohol*, 17 (1956), pp. 296-305.

⁵⁴T. OEI and A. BALDWIN, "Expectancy Theory: A Two-process Model of Alcohol Use and Abuse," *ibid.*, 55 (1994), pp. 525-534.

⁵⁵D. HEATH, "Cross-cultural Studies of Alcohol Use," in M. GALANTER (ed.), *Recent Developments in Alcoholism*, vol. 10, New York, Plenum Press, 1994, pp. 405-416.

The study of motivation attempts to account for impulsive and deliberate action, is concerned with internal and external influences on behaviour, looks for the causes of and the reasons for behaviour, and looks for the intentions imbedded in action.

In an early attempt to explain observed differences in behavioural intensities, C.L. Hull introduced the term *incentive motivation*.⁵⁶ *Incentive motivation* is a construct that refers to the individual's motivation to pursue positive (attractive) goals or avoid negative (unattractive) goals. The motivational state that impels a person to use or abuse alcohol is undoubtedly influenced by affective and cognitive factors.

Affect commonly refers to the psychological (emotional) aspect of a response. Affective change and affective investment, are presumed to influence and to be influenced by one's incentives. What are incentives and why are individuals motivated to pursue them? A person may want to achieve a perceived positive incentive in order to increase the anticipated positive affect associated with it, or a person may want to avoid a negative incentive in order to reduce its negative affect. With humans, it is expectations (cognitive factors) about incentives that appear to direct their striving for goals. Analyses of human motivation indicate that goal striving is the organizing force behind behaviour and that people strive for goals because they expect that reaching them will produce affective changes.⁵⁷ With regard to the use and abuse of alcohol, it has been demonstrated that expectations about alcohol's

⁵⁶C. L. HULL, *Essentials of Behaviour*, New Haven, CT, Yale University Press, 1951.

⁵⁷L. PERVIN, "The Status and Flow of Behaviour: Toward a Theory of Goals," in M. PAGE (ed.), *Nebraska Symposium on Motivation*, vol. 30, Lincoln, NE, The University of Nebraska Press, 1982, pp. 1-53.

effects have been formed prior to its use, that these expectations influence motivation to drink, and that they influence the effects that drinking has on behaviour.⁵⁸ It can be hypothesized that the many variables that impact on the individual's motivation to abuse alcohol do so through the fact that they participate in the formation of expectations about alcohol induced affective change.⁵⁹

There appear to be two ways in which drinking alcohol can bring about affective changes and there are also two corresponding types of effects that people expect to achieve by drinking. The first way is through the direct chemical effects of alcohol.⁶⁰ The individual's expectations about the mood-altering effects of alcohol are often a more potent source of actual changes in mood than is the pharmacological action of alcohol itself.⁶¹ The second way in which drinking brings about affective changes appears to be indirect and occurs by virtue of the fact that drinking alcohol can be instrumental in regulating the other incentives in one's life.⁶² That is, consuming alcohol may either facilitate or interfere with an individual's reaching nonchemical positive or negative goals, thereby indirectly bringing about affective changes. Regardless of whether an affective change produced by drinking alcohol is direct

⁵⁸MARLATT and ROHSENOW, "Cognitive Processes in Alcohol Use: Expectancy and Balanced Placebo Design," pp. 159-199.

⁵⁹Ibid.

⁶⁰R. WILLIAMS, M. GOLDMAN and A. WILLIAMS, "Expectancy and Pharmacological Effects of Alcohol on Human Cognitive and Motor Performance: The Compensation for Alcohol Effect," in *Journal of Abnormal Psychology*, 90 (1981), pp. 267-270.

⁶¹A.M. WALL, R.E. HINSON and S.A. McKEE, "Alcohol Outcome Expectancies, Attitudes Toward Drinking and Theory of Planned Behavior," in *Journal of Studies on Alcohol*, 59 (1998), pp. 409-419.

⁶²Ibid.

or indirect, the use of alcohol appears to be interactive with the individual's motivation and the affective changes experienced as a result of the presence of incentives. The affect that the individual experiences before drinking alcohol and which is expected to change with drinking may have arisen from success or lack of success in achieving a goal. Also drinking alcohol, especially in excessive quantities, changes affect, current motivation and subsequent motivation to use or not to use additional alcohol.

Cognitive processes can include thoughts, perceptions and memories that may help to form expectations about the direct (chemical) and indirect (instrumental) effects of alcohol on affective change. These expectations might involve either the positive or the negative effects of drinking and effects that are immediate or delayed. Also, the expected effects might not correspond to reality. For example, too much emphasis might be placed on the positive and immediate effects and too little emphasis on the delayed and negative effects; that is, judgments about the impact of alcohol will be inaccurate. An individual may have expectations about how alcohol will modify affect directly through its chemical effects. If the effects are expected to be positive, weight could be added to the decision to drink. If the effects are expected to have a negative impact on affect, weight may be added to the decision not to drink. Expectations may also be entertained regarding how drinking will modify affect indirectly by enhancing or interfering with nonchemical incentives. For example, a person might expect that drinking will enhance positive affect because drinking results in peer approval. A person may also expect that drinking will reduce positive affect because a spouse disapproves. A person may expect that he/she could reduce negative affect by drinking

because it would relieve physical pain or he/she might expect to intensify negative affect by drinking because drinking will solidify his/her identity as an alcoholic.

To summarize, there appear to be at least four possible ways that expectancy (cognitive factor) may influence motivation to consume alcohol. The expectation that positive affect will be enhanced or reduced and the expectation that negative affect will be intensified or reduced. Individuals derive emotional satisfaction or dissatisfaction from their anticipation of future events that are expected to be pleasant or unpleasant. Regarding the consumption of alcohol, individuals react affectively to the affective changes expected from alcohol. Several years ago O. Mowrer⁶³ identified four relevant affective reactions (hope, disappointment, relief and fear) that are applicable in this context. An individual will feel hopeful if he/she expects alcohol to enhance positive affect and disappointed if he/she expects drinking to reduce positive affect. An individual will feel relieved if he/she expects alcohol to reduce negative affect and fearful if negative affect is expected to be intensified.

It is reasonable to suggest that alcoholics (perhaps for multiple reasons) may be deceived by their own expectations about alcohol's power for them. Their expectations (anticipations) for the direct or indirect changes in affect that accompany alcohol consumption are inaccurate. In effect, their judgments are inaccurate. These inaccurate judgments may be grounded in the alcoholic's inaccurate cognitions (discussed above). In a moment of clarity, the alcoholic may become aware that he/she has been deceived by the "cunning,

⁶³O. M. MOWRER, *Learning Theory and Behaviour*, New York, John Wiley and Sons, 1960.

baffling, powerful” nature of alcohol.⁶⁴ When this occurs a conditioned and habitual pattern of behaviour may have been established and/or the individual’s psychological and physical health may be already compromised (alcohol abuse, alcohol dependence, the serious phases, types and states of alcoholism). Inaccurate judgments in one area of life (especially when rendered more inaccurate through alcohol use) may have negative implications for understanding, deliberating, choosing, etc., in the other life areas.

It is perhaps clear that the relationship between motivation and alcohol consumption cannot be studied without reference to cognitive variables and affective change. It has been suggested, in this section, that individuals are motivated to use and abuse alcohol because they expect that affective changes will result. Expectancy is itself a cognitive variable that involves at least thoughts, perceptions and memories. The alcoholic’s cognitions and perceptions may be inaccurate and hence motivations and judgments grounded in these inaccurate cognitions and perceptions are also inaccurate. Affective, cognitive and motivational functioning are involved in social relationship – the subject discussed in the following section.

2.2 - The alcoholic’s capacity for social relationships

A significant approach to the study of social relationships in the behavioural sciences has been through the investigation of social skills. Social skills have been studied in a variety of ways. Some of these approaches consist of short and rather diffuse measures that tend to lack clear construct definition and are, therefore, limited in capacity to reveal much about the

⁶⁴*Alcoholics Anonymous*, p. 58.

specific nature of social skills.⁶⁵ Other approaches appear to measure social skill-related constructs without demonstrating the relationship between these constructs and social skills. Thus, there are standardized measures of empathy,⁶⁶ capacity for self-disclosure⁶⁷ and assertiveness.⁶⁸ Some approaches have taken the perspective that nonverbal skills, such as emotional sending ability,⁶⁹ emotional decoding ability⁷⁰ and the self-monitoring of nonverbal behaviour,⁷¹ reflect integral elements of social skills. Needless to say, assessing the role that social skills play in the development of social interpersonal relationships is a challenge.

Some descriptions of social skills are in essence descriptions of personality traits in disguise. The focus is, therefore, on what people are rather than on what they do. H. Friedman, for example, views social skills as the behavioural manifestations of underlying

⁶⁵B. SARASON et al., "Concomitants of Social Support: Social Skills, Physical Attractiveness and Gender," in *Journal of Personality and Social Psychology*, 49 (1985), pp. 469-480.

⁶⁶A. MEHRABIAN and N. EPSTEIN, "A Measure of Emotional Empathy," in *Journal of Personality*, 40 (1972), pp. 525-543.

⁶⁷S. COHEN, D. SHERROD and M. CLARK, "Social Skills and the Stress Protective Role of Social Support," in *Journal of Personality and Social Psychology*, 50 (1986), pp. 963-973.

⁶⁸S. RATHUS, "A 30-Item Schedule for Assessing Assertive Behaviour," in *Behaviour Therapy*, 4 (1973), pp. 398-406.

⁶⁹H. FRIEDMAN et al., "Understanding and Assessing Nonverbal Expressiveness: The Affective Communication Test," in *Journal of Personality and Social Psychology*, 39 (1980), pp. 333-351.

⁷⁰R. ROSENTHAL et al., *Sensitivity to Nonverbal Communication: The Pons Test*, Baltimore, MD, Johns Hopkins University Press, 1979, pp. 1-22.

⁷¹M. SNYDER, "The Self-Monitoring of Expressive Behaviour," in *Journal of Personality and Social Psychology*, 30 (1974), pp. 526-537.

personality traits.⁷² However, focusing on the observable behaviours that result from the possession of a social skill could be a more reliable and valid approach because this perspective would facilitate an examination of what occurs between persons in social relationships and move the focus of analysis from the person to the dynamics of the interaction. R. Riggio presents such a perspective.⁷³

Riggio's framework draws from research in the areas of communication, clinical work in social skills training and attempts by personality and social psychologists to measure factors related to social relationships. Within this perspective social skills are of three basic types: skills in communication, sensitivity and control. These three skills operate in both the verbal and nonverbal domains and are related to success in social relationships. The resulting six dimensions of social skills are measured by *The Social Skills Inventory (SSI)*.⁷⁴ These skills are *Emotional Expressivity*, *Emotional Sensitivity*, *Emotional Control*, *Social Expressivity*, *Social Sensitivity* and *Social Control*.⁷⁵

Emotional Expressivity is the ability to transmit, through nonverbal cues, felt emotional states with accuracy and spontaneity. *Emotional Sensitivity* is the ability to process, with rapidity and accuracy, nonverbal messages from another. *Emotional Control*

⁷²H. FRIEDMAN, "The Concept of Skill in Nonverbal Communication: Implications for Understanding Social Interaction," in R. ROSENTHAL (ed.), *Skill in Nonverbal Communication*, Cambridge, MA, Oelgeschlager, Gunn and Hain, 1979, pp. 1-22.

⁷³R. RIGGIO, "Assessment of Basic Social Skills," in *Journal of Personality and Social Psychology*, 51 (1986), pp. 649-660.

⁷⁴_____, *Social Skills Inventory Manual*, Palo Alto, CA, Consulting Psychologists Press, 1989, 21 pp.

⁷⁵*Ibid.*, pp. 2-3

is the capacity to regulate (to adjust to the requirements of the context) the nonverbal expression of emotion. *Social Expressivity* is skill in verbal communication and ability to engage others in conversation. *Social Sensitivity* includes knowledge of social norms, the ability to listen and to process verbal communication. *Social Control* comprises the ability to act, to role-play and to present oneself, with adeptness, within a specific social context.⁷⁶

Individuals with stronger social skills would be expected to have more frequent interactions with others than would persons deficient in social skills. Once a conversation begins, skills in expressivity would be important to keep the conversation flowing and to provide the momentum for the interaction to develop. When the acquaintance process begins, social skills in controlling and regulating behaviour would become important. The basic skill of emotional and social control could allow individuals to keep expressive behaviour at an appropriate level. Sensitivity skills and skills in emotional and social control may be of prime importance for the development of intimate relationship bonds. It is sensitivity that is behind the ability to be a good listener and to be emotionally in tune with another person. It is also skill in regulating communication that is behind the give-and-take processes of strong relationships. For emotional health, relationships that progress to deep levels of involvement are critical because social support, in most situations, arises out of relationships that are characterized by feelings of closeness and intimacy.

Specific social skills are obviously important in their own right. However, a balance between these social skills may be required for the development of rewarding social relationships. For example, an individual may score high on the social skill dimensions of

⁷⁶*Ibid.*

expressivity and control and, at the same time, lack sensitivity. Such a person would probably have little difficulty making initial contact with individuals and might fit in well in a group setting. However, this same person would probably present as self-centred due to a lack of sensitivity to what others are saying or feeling. This individual may have casual acquaintances but few close friendships. Similarly, extreme social sensitivity could manifest itself in shyness which could have an adverse effect on relationship formation and development. The possession of extreme amounts of social control may make one appear to be distant or aloof and may make self-disclosure difficult. Conversely, too little social control could lead to too much self-disclosure. An imbalance, therefore, between the components of basic social skills could be an indication of dysfunctionality.

The balanced and skillful communication of attitudes and feelings, such as the expression of affection, should be relatively stress free for the socially skilled person. The socially skilled individual also may be responsive to the needs and feelings of others or possess empathic capacity. Empathy, as a combination of specific social skills, is critical to the maintenance and enhancement of continuous relationships.⁷⁷

This information about social skills and their relationship to social functioning provides insights regarding the alcoholic's social functioning. It will be recalled that alcoholics frequently have elevated scores on the *Pd* scale of the *MMPI*. This scale measures "social maladjustment," "feelings of alienation," "shallow social relationships," rejection of

⁷⁷B. GOTTLIEB, "Social Support and the Study of Personal Relationships," in *Journal of Social and Personality Relationships*, 2 (1985), pp. 351-375.

“social conventions” and an inability to learn “from experience.”⁷⁸ From these data, it can readily be concluded that the individual who scores high on the *Pd* scale would have underdeveloped social skills and would receive little reinforcement from social interactions. It is quite possible that such an individual could score high on *social expressivity* because of verbal ability but low on *social sensitivity* and *emotional sensitivity*. The individual who ignores social norms and who cannot learn from experience would be expected to be lacking in *social sensitivity* and in the ability to decode emotions. Similarly, MacAndrew’s description of the *primary alcoholic*⁷⁹ as “bold” and impulsive would appear to fit well with a high score on *social expressivity* and low scores on *emotional sensitivity*, *emotional control* and *social sensitivity*. MacAndrew’s *secondary alcoholics* and those who score high on the *D* and *Pt* scales of the *MMPI* would be expected to score low on *emotional expressivity*, *social expressivity*, *social control* and possibly high on *social sensitivity*. Introversion, shyness, depression, anxiety and inability to interact socially are characteristic of those individuals who score high on the *D* and *Pt* scales. It can be predicted that these same individuals are the ones who cannot process emotion (*emotional sensitivity*), who do not easily interact verbally with others (*social expressivity*), who cannot present themselves with adeptness (*social control*) and who worry about the appropriateness of their social behaviours (*social sensitivity*). Furthermore, once the alcoholic spiral downward begins, the individual so involved becomes more isolated and may not be in a position to receive social support

⁷⁸See CARSON, “Interpretation Manual to the *MMPI*,” p. 279.

⁷⁹See MACANDREW, “Alcoholic Personality or Personalities: Scale and Profile Data Characteristics,” pp. 73-85.

from available sources (family, friends, employment). The opportunities for the development and practice of appropriate social skills are limited when one is isolated and under conditions of isolation one cannot reap the rewards of social interaction.

Studies directly comparing the social skills development of alcoholics with control subjects are not currently available. Neither are studies comparing the opportunities afforded to alcoholics for the development of social skills with the opportunities afforded to control subjects available. Nevertheless, from what is known about the affective functioning of alcoholics, particularly as measured by the *MMPI* scales (*Pd*, *D*, *Pt*), and from MacAndrew's delineation of *primary* and *secondary alcoholics*, it can be stated that alcoholics (on the average) are likely to have underdeveloped social skills and to lack the balance, between specific social skills, necessary for skilled social functioning. At least some individuals may abuse alcohol in order to feel more adequate in social settings and in order to cope with the frustration that results from non-rewarding social interactions. Furthermore, individuals who succeed in recovery are those persons who develop rewarding alternatives to drinking, who receive social and emotional support from family and friends, who attend Alcoholics Anonymous meetings, and who develop (in general) meaningful sources of satisfaction.⁸⁰ Social skills and rewarding social relationships may be instrumental in preventing alcohol

⁸⁰M.G. PERRI, "Self-change Strategies for the Control of Smoking, Obesity and Problem Drinking," in S. SHIFFMAN and T. WILLS (eds.), *Coping and Substance Abuse*, Orlando, FL, Academic Press, 1985, pp. 295-317. See also M. SNOW, J. PROCHASKA and J. ROSSI, "Process of Change in Alcoholics Anonymous: Maintenance Factors in Long-Term Sobriety," in *Journal of Studies on Alcohol*, 55 (1994), pp. 362-371.

abuse and in the recovery from alcohol abuse. Social skills, social relationships and affective states obvious by impact upon a marital relationship.

2.3 - The alcoholic's capacity for marital relationship

In order to analyse the alcoholic's capacity for a marital relationship it is necessary to have at least a basic understanding of the factors involved in a marital relationship. The capacity for commitment and the capacity for the development of an intimate interpersonal relationship would appear to be minimum requirements of a marital relationship.

What is known about commitment? Do alcoholics differ from nonalcoholics in the capacity for commitment? At one time in our society, marriage effectively functioned as a life-long commitment. In witnessing the marriage vows, the priest asks: "_____ do you take _____ to be your wife/husband? Do you promise to be true to her/him in good times and in bad, in sickness and in health, to love her/him and to honour him/her all the days of your life?" This simple formula encompasses the concept of a permanent commitment to one person. This commitment is to be characterized by an intimate love and respect. Many young realists, presently aware of the divorce statistics, know that the probability of their relationship ending with divorce is almost as high as the probability of its ending by death. They may not believe that divorce is in their future but they cannot ignore reported statistics. Why do some people choose to continue or not to continue in particular marital relationships? Do some people choose to continue because of the original commitment? The response to these questions can be partially sought in: (1) an explanation of the various meanings of commitment, and (2) the psychological models of commitment.

In the 1950's Heider suggested that people remain in marriages because they want to, ought to, or have to do so.⁸¹ A number of authors have labelled these concepts with the phrases *personal commitment*, *moral commitment* and *structural commitment*.⁸² The decision to remain committed to or to remain in a marital relationship may be a function of: (1) *personal commitment*, the feeling that one wants to continue the relationship or (2) *moral commitment*, the feeling that one ought to continue the relationship and (3) *structural commitment*, the feeling that one has to continue the relationship. These three types of commitment differ on the internal-external dimension. *Personal* and *moral commitment* are likely to be experienced as originating within oneself. *Structural commitment* is usually experienced as due to external constraints. *Personal commitment* may stem from one's attitudes and self-concept, *moral commitment* from one's value system and sense of right and wrong, *structural commitment* from one's assessment of the costs involved if the marriage is terminated. *Personal commitment* may be experienced in terms of choice. *Moral* and *structural commitment* could both involve a sense of constraint. Decisions based largely on *moral commitment* may involve a sense of self-constraint ("I don't really want to, but I ought to do what I think is right"). *Structural commitments*, on the other hand, are usually experienced as totally externally imposed and involve less choice. There may be factors in the environment that make it costly and difficult to leave a relationship (for example, children)

⁸¹F. HEIDER, *The Psychology of Interpersonal Relations*, New York, John Wiley and Sons, 1958.

⁸²M. STRUBE and L. BARBOUR, "The Decision to Leave an Abusive Relationship: Economic Dependence and Psychological Commitment," in *Journal of Marriage and the Family*, 45 (1983), pp.785-793.

regardless of the quality of one's *personal* and *moral commitment*. If *structural commitments* are strong and dominant, the person feels that he/she must continue the relationship because other alternatives are not available.

C. Rusbult has attempted to explain the capacity for commitment and commitment continuity, through her Investment Model.⁸³ In this model satisfaction, alternatives and investment combine to determine a continuous commitment. Commitment is defined as "the tendency to maintain a relationship and to feel psychologically attached to it."⁸⁴ This concept of commitment thus includes two distinct elements: one focuses on behavioural intent, the other on psychological attachment.⁸⁵ Rusbult's merging of the concept of "attachment commitment" (close to *personal commitment*) with intention at the time of marital consent is an attempt to forge a causative link between the original intention and future outcomes (remain together or separate). However, in any individual case, the original intention to remain committed and the future reasons for persevering may be quite distinct. Heider's commitment framework, on the other hand, does maintain a conceptual distinction between the original intention of perpetuity and later experiences of commitment. The later experiences of commitment are the significant factors in the decision-making processes that lead to the formation of future decisions (to persevere or terminate). These later decisions can be a function of the three experiences of commitment and can result from the balance

⁸³C. RUSBULT, "A Longitudinal Test of the Investment Model: The Development (and Deterioration) of Satisfaction and Commitment in Heterosexual Involvements," in *Journal of Personality and Social Psychology*, 45 (1983), pp. 101-117.

⁸⁴*Ibid.*, p. 102.

⁸⁵*Ibid.*, p. 113.

between “want,” “ought to” and “must” in the individual’s concrete situation. Rusbult’s concept of “satisfaction” in a marital relationship is, no doubt, related to attitude toward marriage and attitude toward the partner. Satisfaction is therefore, not solely determined by subjective and immediate experiences. Level of satisfaction is also a function of the individual’s understanding of the purpose of marriage for the self and the marital partner. Dissatisfaction within marriage could be due to many interacting factors not the least of which could be unrealistic expectations. A husband may believe, for example, that it is the responsibility of his partner to create his personal happiness and that he will only remain in and be faithful to the marriage if the same occurs.

A Psychological Model, similar to the models of Heider and Rusbult, has been presented by G. Levinger.⁸⁶ Levinger argues that the concept of group cohesiveness is a useful framework for understanding marital stability because the marital dyad can be understood as a limited group. Cohesiveness is understood in terms of *attractions, barriers* and *alternative attractions*.⁸⁷ *Attractions* appear to correspond quite closely to the concept of *personal commitment* and they include attitudes toward the marital partner and attitudes toward the relationship.⁸⁸ Although Levinger did not discuss self-knowledge and knowledge of the partner, his framework could include these under the concept of attractions. His concept of *barriers* is similar to the concept of moral commitment. *Barriers* against

⁸⁶G. LEVINGER, "A Social Exchange View on the Dissolution of Pair Relationships," in R. BURGESS and T. HUSTON (eds.), *Social Exchange in Developing Relationships*, New York. Academic Press, 1979, pp. 169-193.

⁸⁷Ibid.

⁸⁸Ibid.

relinquishing the commitment arise from emotional, religious and moral commitments that a person has because of the marriage itself, the partner and the children.⁸⁹ These barriers are not without value because society (not just the individual) has a stake in marriage stability. Marital units are basic to society. Marriage, as an institution, is governed by laws (state and church) as well as community expectations. In Levinger's view *alternative attractions* may also motivate an individual to persevere with a commitment. One may be attracted to relatives, the community, the law and the church.⁹⁰ One may not be prepared to suffer the consequences of flouting the law, incurring the disapproval of the church and alienating from relatives and friends.

It is perhaps obvious that the explanations presented through these psychological models are not entirely satisfactory. They are, however, tentative attempts to explain initial commitment to marriage and continuity of commitment. The implication is that if perseverance in commitment can be understood, then this understanding may shed light on the quality of the original commitment. Research in this area is highly significant for several reasons. When individuals agree to, consent to, commit themselves to marriage, they must be capable of and are committing themselves to the development of a unique interpersonal relationship. If this relationship does not emerge, the marriage may become intolerable. Through the process of living through both the constricting and liberating experiences inherent in a marital relationship, there can be an arousal and development of consciousness so that the partners become increasingly aware of the purpose of their marriage. A long term

⁸⁹Ibid.

⁹⁰Ibid.

and exclusive association with another human being involves a confrontation with the great awakener, reality. When the original "in-loveness" wears off in daily marital existence, what comes next depends entirely on the quality of the original commitment as well as perseverance in commitment. If the capacity to make the original commitment was present and if the desire and capacity to persevere in commitment exist, love will change and become a true devotion to the partner as well as an inner personal, purposeful and liberating experience. Marriage is then understood and experienced as gift. It is not by accident that a long-term and exclusive relationship demands a continuous process of overcoming egotisms and autoerotisms by both parties. This process prepares the parties for and makes possible their evolutionary and expanding understanding of and experience of marriage as gift. Marriage becomes the context within which a mysterious power of love and life comes to each through the other. It is through the acceptance of a common fate that a man and a woman can proceed to complete each other through all the various experiences and vicissitudes of life.⁹¹

The question of the alcoholic's capacity for a commitment can be assessed within the above context. What any person, including the alcoholic, can commit himself/herself to must always carry the proviso *Deo concedente*. The commitment ideally means the decision to embrace this state/journey with this person and to leave no effort or means untried in order to persevere with the commitment. This presupposes a full commitment and may require real inner discipline. When a serious difficulty or a strong counter attraction surfaces, there may be tremendous centrifugal forces against which the parties must struggle. Under such

⁹¹H. KEYSERLING, "Correct Statement of the Marriage Problem," in *The Book of Marriage*, New York, Harcourt, Brace and Co., 1926, pp. 9-26.

circumstances the realization that external rules of conduct are binding can be liberating and may be highly beneficial. If alcohol is used to escape from the experience of reality, it could indicate an incapacity to experience marital reality and hence an incapacity to commit the self to marriage. An equitable and just answer to the question of capacity/incapacity for commitment demands an assessment of the individual's level of emotional maturation, affective, cognitive and motivational functioning in light of the requirements for commitment and perseverance in commitment. Commitment to marriage is not only a commitment to one's partner but also a commitment to movement through a unique type of interpersonal relationship.

Wrenn states that the "personalist obligations ... required to sustain the marital partnership" are: "self-revelation, understanding and loving."⁹² He clarifies this statement when he writes: "For a valid marriage, it is not necessary that spouses actually perform those acts, (self-revelation, understanding and loving) but is necessary that they have the capacity to perform those acts...."⁹³ Wrenn's statement is undoubtedly accurate. However, it may also be accurate to state that unless these acts are performed, at least in a minimal manner, the unique interpersonal relationship will not develop. The capacity for self-disclosure and for understanding of oneself and the other may vary widely from individual to individual and within a marital relationship. An impairment of the capacity to self-disclose and to understand would not necessarily, in the individual case, prevent the emergence of a healthy

⁹²L. WRENN, *Annulments*, Washington, DC, Canon Law Society of America, 1996, pp. 45-46.

⁹³*Ibid.*, p. 46.

interpersonal relationship. The actual constituents of an intimate interpersonal relationship may also differ from culture to culture and may differ from marriage to marriage within a culture. However, it would be difficult to argue that an intimate interpersonal relationship could exist without commitment to each other's well-being. Love can be partially understood as commitment to the other.

How can love be understood? Do alcoholics differ from non-alcoholics in their capacity to love? Most scientists distinguish between two forms of love – *passionate love* and *companionate love*. Fisher, Shaver, and Carnochan point out that all emotions possess a number of components:

[Emotions are] ... organised, meaningful, generally adaptive action systems... [They] are complex functional wholes including appraisals or appreciations, patterned physiological processes, action tendencies, subjective feelings, expressions, and instrumental behaviours... . [However,] none of these features is necessary for a particular instance of emotion. Emotions fit into families, within which all members share a family resemblance but no universal set of features.⁹⁴

They contend that there are five prototypic emotions: two positive (love and joy) and three negative ones (anger, sadness, and fear). They, too, distinguish two kinds of love: *passionate love* (which they label "infatuation") and *companionate love* (which they label "fondness").

Passionate love (sometimes called "obsessive love," "infatuation," "lovesickness," or "being in love") is an intense emotion. It has been defined as:

A state of intense longing for union with another. Reciprocated love (union with the other) is associated with fulfilment and ecstasy. Unrequited love

⁹⁴K. FISCHER, P. SHAVER and P. CARNOCHAN, "How Emotions Develop and How They Organize Development," in *Cognition and Emotion*, 4 (1990), pp. 81-127.

(separation) is associated with emptiness, anxiety, or despair. *Passionate love* is a complex functional whole including appraisals or appreciations, subjective feelings, expressions, patterned physiological processes, action tendencies, and instrumental behaviours.⁹⁵

The Passionate Love Scale was designed to assess the cognitive, physiological, and behavioural indicants of such a "longing for union."⁹⁶

Companionate love (sometimes called "true love" or "conjugal love") is a far less intense emotion. It combines feelings of deep attachment, commitment and intimacy. It has been defined as

the affection and tenderness we feel for those with whom our lives are deeply entwined. *Companionate love* is a complex functional whole including appraisals or appreciations, subjective feelings, expressions, patterned physiological processes, action tendencies, and instrumental behaviours.⁹⁷

Psychologists have used a variety of scales to measure *companionate love*. For example, Berscheid focussed on the subjects' subjective appraisals (attitudes).⁹⁸ More recently, Sternberg has assumed that companionate relationships possess little passion but a great deal

⁹⁵E. HATFIELD and R. RAPSON, *Love, Sex and Intimacy: Their Psychology, Biology, and History*, New York, Harper Collins, 1993, p. 5.

⁹⁶E. HATFIELD and S. SPRECHER, "Measuring Passionate Love in Intimate Relations," in *Journal of Adolescence*, 9 (1986), pp. 383-410.

⁹⁷HATFIELD and RAPSON, *Love, Sex and Intimacy*, p. 9.

⁹⁸E. BERCHEID, "Emotion," in H. KELLEY et al. (eds.), *Close Relationships*, San Francisco, W.H. Freeman, 1983, pp. 110-168.

of commitment and intimacy.⁹⁹ He, therefore, measured companionate love by measuring commitment in intimacy.¹⁰⁰

Researchers have proposed that both *passionate* and *companionate love* can be understood, in part, by examining the mother-child attachment experiences on which they are based. Researchers interested in *passionate love* have tended to focus on infants' attachments (as the prototype of later passionate attachments). Researchers interested in *companionate love* have tended to focus on parental attachments (as the prototype of *companionate love*). Of course, marital relationships usually involve both *passionate* and *companionate love* but in the sequence of *passionate* followed by *companionate love*.

Shaver and Hagan have suggested that romantic love should be understood as a form of attachment.¹⁰¹ Children's early patterns of attachment probably influence their adult attachments. Children are likely to become securely attached to their parents if they are allowed to be both affectionate and independent. Such children should mature into secure adults who are comfortable with intimacy and are able to trust a marital partner. Children may become anxious/ambivalent if they have learned to be "clingy" and dependent, or fearful of being smothered and restrained. Such children may become anxious/ambivalent adults who fall in love easily, who seek extreme levels of closeness, and who are terrified that they will be abandoned. The avoidant child (who has been abandoned early on) may become an

⁹⁹R. STERNBERG. "Triangulating Love," in R. STERNBERG et al. (eds.), *The Psychology of Love*, New Haven, CT, Yale University Press, 1988, pp. 119-138.

¹⁰⁰*Ibid.*

¹⁰¹P. SHAVER and C. HAGAN, "A Biased Overview of the Study of Love," in *Journal of Social and Personal Relationships*, 4 (1988), pp. 474-501.

avoidant adult who is uncomfortable with getting close to others and who has difficulty with trust.

This same type of reasoning was used by Bartholomew and Horowitz when they proposed that the attachment styles of adults should fall into one of four patterns dependent upon their self image (positive or negative) and their image of others (positive or negative).¹⁰² Adults who have a positive self-image and a positive image of others should be capable of becoming securely attached to others. Adults with low self-esteem and a positive regard for others may be preoccupied with the anticipated benefit of intimate relationships. Adults who have a negative self-image and a negative image of others may be fearful of intimate relationships with others. Adults who have a positive self-image and a negative image of others may be dismissive of or detached from others. These authors found significant evidence to support their typology.¹⁰³

It can be predicted that when self-esteem is threatened, individuals will be more prone to fall prey to passionate love. Hatfield tested this hypothesis. He found that when the self-esteem of women was threatened they were more attracted to a potential romantic partner.¹⁰⁴ Bartholomew and Horowitz also found a link between low self-esteem and *passionate love*.¹⁰⁵

¹⁰²K. BARTHOLOMEW and L. HOROWITZ, "Attachment Styles in Young Adults: A Test of a Four-category Model," in *Journal of Personality and Social Psychology*, 61 (1991), pp. 226-244.

¹⁰³*Ibid.*

¹⁰⁴E. HATFIELD, "The Effect of Self-esteem on Romantic Liking," in *Journal of Experimental Social Psychology*, 1 (1965) pp. 184-197.

¹⁰⁵See BARTHOLOMEW and HOROWITZ, "Attachment Styles in Young Adults," pp. 226-244.

A number of theorists have observed that people who are dependent and insecure (or who are caught in situations that promote such feelings) are especially vulnerable to *passionate love*.¹⁰⁶ When people are passionately in love, they are painfully aware of how dependent they are on those they love and dependency naturally breeds insecurity. In addition, authors, beginning with S. Freud, have argued that *passionate love* is fuelled by anxiety and fear.¹⁰⁷ Anxious individuals appear to be especially compelled to seek passionate love relationships.¹⁰⁸

From the above discussions it can be concluded that stable marital relationships require commitment, intimacy, and *companionate love*. These elements provide continuity and the necessary environment within which an intimate interpersonal relationship can emerge, develop and be strengthened. *Passionate love* may be short-lived and associated with anxiety, fear, dependency, insecurity and low self-esteem.

It is important to guard against overgeneralization and to respect individual differences. On the other hand, the research findings (and above discussion) regarding the alcoholic's depression, anxiety, fear, low self-esteem, propensity for shallow relationships and

¹⁰⁶E. BERCHEID et al., "Outcome Dependency: Attention, Attribution and Attraction," in *Journal of Personality and Social Psychology*, 34 (1976), pp. 978-989.

¹⁰⁷S. FREUD, "Contributions to the Psychology of Love: A Special Type of Choice of Objects Made by Men," in E. JONES (ed.), *Collected Papers of Sigmund Freud*, London, Hogarth Press, 1953, pp. 192-202. See also E. HATFIELD and R. RAPSON, "Passionate Love/Sexual Desire: Can the Same Paradigm Explain Both?" in *Archives of Sexual Behaviour*, 16 (1987), pp. 259-278.

¹⁰⁸R. SOLOMAN and J. CORBIT, "An Opponent Process Theory of Motivation: I. The Temporal Dynamics of Affect," in *Psychological Bulletin*, 81 (1974), pp. 119-145.

inability to learn from experience, provide a framework within which the alcoholic's capacity for commitment, *companionate love*, and sharing can be assessed. Is an alcoholic who is intoxicated, in a withdrawal state, abusive of alcohol, dependent upon alcohol or in any of the serious phases, types, states of alcoholism capable of commitment? Is an individual who is abusive of alcohol fully capable of commitment, intimacy and *companionate love*?

Alcoholism may not only inhibit the development of an intimate relationship but it may also be associated with behaviours (violence and aggression) that are directly destructive of relationships. Researchers have attempted to study the relationship between destructive behaviours and alcoholism by posing three related questions. These are: 1. Is there an overall causal relationship between alcohol consumption and violence? 2. Is there a causal relationship for some individuals and/or some circumstance, that is, a moderate or interactive effect? 3. Is there an identifiable causal mechanism by which alcohol consumption might influence the probability of violent behaviour? Despite a high correlation between alcohol abuse and violence in the home, there is considerable controversy about alcohol's role in connection with the violence. Psychosocial interpretations of the alcohol/abuse relationship include the following. First, alcohol-induced cognitive impairment may result in misinterpretation of the spouse's verbal-behavioural cues and intentions and increase the likelihood of violent interactions.¹⁰⁹ Second, alcohol interacts with the individual's need to exert personal power and control in marital relationships.¹¹⁰ Third, socially learned alcohol

¹⁰⁹K. PERNANEN, "Alcohol and Crimes of Violence," in B. KISSEN and H. BEGLEITER (eds.), *Social Aspects of Alcoholism*, New York, Plenum Press, 1976, pp. 351-444.

¹¹⁰D. McCLELLAND and W. DAVIS, "The Influence of Unrestrained Power Concerns on Drinking in Working-class Men," in D. McCLELLAND et al. (eds.), *The Drinking Man*,

expectancy effects lead individuals to think that alcohol induces violence and that it may be an acceptable excuse for aggression.¹¹¹ These expectancy effects have sociocultural roots. Fourth, multiple distal factors (background influences, drinking patterns, marital discord) combine with proximal influences, such as situational cues and acute alcohol effects in the context of aversive interpersonal interactions, to produce aggression between the spouses.¹¹²

A common feature of these explanations is that alcohol abuse in and of itself is not sufficient for a person to engage in acts of aggression. Alcohol abuse indirectly causes aggression by producing changes within the person that increase the probability of aggression. If underlying social, attitudinal and adjustment problems did not exist alcohol consumption would not result in the manifest behaviour. This observation has implications for treatment programs and for the capacity to establish intimate interpersonal relationships.

Although it is not clear that all alcoholics are incapable of marital relationships, there is no doubt that alcohol abuse has a negative impact on the capacity for commitment, intimacy and companionate love. Alcoholism interferes with affective, cognitive and motivational functioning and arrests emotional development. When an individual is addicted, energy that

New York, Free Press, 1972, pp. 142-161.

¹¹¹G. SPIEKER, "What is the Linkage Between Alcohol Abuse and Violence?" in E. GOTTHEIL et al. (eds.), *Alcohol, Drug Abuse and Aggression*, Springfield, IL, Charles C. Thomas Press, 1983, pp. 125-136.

¹¹²K. LEONARD, "Drinking Patterns and Intoxication in Marital Violence: Review, Critique and Future Directions for Research," in S. MARTIN (ed.), *Alcohol and Interpersonal Violence: Fostering Multidisciplinary Perspectives*, Rockville, MD, National Institute on Alcohol Abuse and Alcoholism, 1993, pp. 253-280. See also C. M. MURPHY and T. J. O'FARRELL, "Couple Communication Patterns of Maritally Aggressive and Nonaggressive Male Alcoholics," in *Journal of Studies on Alcohol*, 58 (1997), pp. 83-90.

should be focused on the development and maintenance of an intimate interpersonal relationship is consumed by the addiction. In addition, alcoholism may be associated with destructive behaviours that prevent the possibility of a healthy, supportive and life-giving interpersonal relationship. Alcoholism may not only affect the marital dyad but it may also interfere with the exercise of appropriate parenting skills.

2.4 - The alcoholic's capacity for parenting

The alcoholic's capacity for parenting can only be assessed within the context of what is required from any parent. Scott Peck summarizes many parental skills in a brief paragraph.

He writes:

The parents who devote time to their children, even when it is not demanded by glaring misdeeds, will perceive in them subtle needs for discipline, to which they will respond with gentle urging or reprimand or structure or praise, administered with thoughtfulness and care. They will observe how their children eat cake, how they study, when they tell subtle falsehoods, when they run away from problems rather than face them. They will take the time to make these minor corrections and adjustments, listening to their children, responding to them, tightening a little here, loosening a little there, giving them little lectures, little stories, little hugs and kisses, little admonishments, little pats on the back.¹¹³

The parental skills contained in the above description can be distilled into the following words and phrases. The parent must show affection, enjoy being with the child, listen, support, encourage, guide, reason, share feelings, insist on socially acceptable behaviour, allow the child to experience the consequences of his/her behaviour, resolve conflicts, compromise, value the individuality of the child and affirm the importance of the relationship. These

¹¹³S. PECK, *The Road Less Travelled*, New York, Simon and Schuster, 1978, p. 23.

behaviours must be manifested with consistency so that the child can feel secure in a predictable environment.

Whether children spend their developmental years in families centred around alcohol or in nonalcoholic families, they must all face the challenges of each developmental stage with whatever resources they inherit, with the resources provided by their environments and with the ones they intentionally or unintentionally develop. Maturational and environmental interactions influence developmental changes in every domain. Rates of change in one developmental domain are not always consistent with rates of change in other developmental domains. Biological development may, for example, be more advanced than social development.

Developmental research describes behavioural changes that occur with increases in chronological age.¹¹⁴ Change and progression through the developmental sequence are viewed as both a dynamic quantitative and qualitative process. When change is quantitative, it is additive. As children grow older, they think, feel and learn more. When change is qualitative, it is unique. As children grow, they think, feel and learn differently. Movement through the developmental sequence is often described as the progression from one stage of development to the next stage. Stage theory has been used to describe psychosexual, moral, affective, and emotional development. Progression through each stage is generally viewed as a movement from less mature to more mature functioning. Cognitive developmental

¹¹⁴C. SPIKER, "The Concept of Development: Relevant and Irrelevant," in *Monographs of the Society for Research in Child Development*, 31 (1966), pp. 40-54.

changes, for example, have been thoroughly described by Piaget as a series of stages that are hierarchical and invariant in order.¹¹⁵

Piaget's constructionist theory of equilibrium enjoys wide acceptance.¹¹⁶ Equilibration accounts for the changing and transformational character of how children come to know the world. The development of knowledge about the world and acting as a result of this knowledge are important components of Piaget's Genetic Epistemological Theory. Development, within this theory, is understood as the gradual transformation and interplay of biological and logical structures. The self-monitored adaptation to events, people and objects in the environment facilitates equilibrium (balance) between oneself and the environment. Equilibration, through self-regulated interaction, is accomplished through the processes of assimilation and accommodation. Assimilation and accommodation occur automatically and often without the conscious awareness of the individual, enabling the child to incorporate new sensory and motoric experiences into existing cognitive structures. Novel experiences are changed (assimilated) to facilitate their incorporation into existing cognitive structures. In the process of assimilating new experiences existing cognitive structures must adjust (accommodation). Development occurs through these two biologically determined structures. Development is, thus, a self-generated and self-constructed cycle. Actions and thoughts feed back upon their original cognitive structures and this feed back changes the

¹¹⁵J. PIAGET, *The Origins of Intelligence in Children*, New York, Norton, 1963, 419p.

¹¹⁶E. NEIMARK, "Moderators of Competence: Challenges to the Universality of Piagetian Theory," in E. NEIMARK, R. DELISI and J. NEWMAN (eds.), *Moderators of Competence*, Hillsdale, NJ, Erlbaum Publishers, 1985, pp. 1-14.

original structures. During normal developmental changes, physical appearances transform, cognitive abilities alter quantitatively and qualitatively, and biological and psychological functioning undergo rapid and sometimes dramatic fluctuations.

Within this framework, parental alcoholism can be viewed as an additional challenge that confronts the child's assimilating and accommodating processes. What adjustments must be made, by the developing child of an alcoholic parent, in the service of emotional survival and in order that some sense of equilibrium might be achieved? Some answers to these questions have emerged from clinical settings. It must be remembered that subjects studied in these settings are not representative of the general population because these subjects are not randomly selected from the population. The conclusions drawn, therefore, from observations made in these settings should be accepted with caution.

The clinical work of Stephanie Brown is widely accepted as descriptive of and representative of interferences to developmental processes experienced by many children who spend their developmental years in a family centred around alcohol.¹¹⁷ Brown claims that the child of an alcoholic parent is confronted with inconsistency and unpredictability. In order to cope with these threats to security, the child typically develops a denial system and adopts roles that serve as survival mechanisms. The roles become habitual and the resultant inflexibility arrests emotional development. The child, later as an adult, will therefore, be ill-equipped to meet the demands of adult adjustment. Some of the roles that these children

¹¹⁷S. BROWN, *Treating Adult Children of Alcoholics: A Developmental Perspective*, New York, John Wiley and Sons, Inc., 1988, xxii, 333 p. In this text, BROWN draws extensively from the work of CLAUDIA BLACK. See C. BLACK, *It Will Never Happen To Me*, Denver, CO, M.A.C. Publishing, 1982, 183p.

adopt have been labelled the *responsible child*, the *adjuster*, the *placater*, and the *acting-out child*.¹¹⁸

Responsible children are typically the oldest (or only child) in the family. They learn to rely completely on themselves and they come to believe that adults are unavailable or that they do not care. These individuals have difficulties sharing and establishing trusting relationships. They need to be in control and may experience loneliness, depression, anxiety and fear. Adjusters do not attempt to prevent or alleviate the family disorganization. They appear detached from others, selfish and they may act without thinking or feeling. They do not have a sense of responsibility and are fearful of the decision-making process. They feel that they are powerless and do not invest themselves in relationship. The placaters attempt to fix the sadness, fears and anger of all family members. They are highly skilled at diverting attention from themselves and they do not self-disclose. Self-disclosure would involve revealing and dealing with their own painful reality. They are not comfortable with receiving affection and, thus, they find entrance into an equal partnership highly threatening.¹¹⁹ Since their own needs for belonging are not fulfilled they are likely to experience depression. The acting-out children cause disruption in their own lives and in the lives of others. Their role is to distract all family members from the issue of alcoholism. They are angry and may remain angry. Adult relationships may be permeated with anger and resentment.

¹¹⁸BROWN, *Treating Adult Children of Alcoholics*, p. 19. See also C. BLACK, *Double Duty: Dual Dynamics Within the Chemically Dependent Home*, New York, Ballantine Books, pp. 13-17.

¹¹⁹The inability to enter into a partnership is also said to be true of alcoholics. See *Twelve Steps and Twelve Traditions*, p. 53: "The primary fact that we fail to recognize is our total inability to form a true partnership with another human being."

Different roles are often adopted by different children within the family or some children may exhibit characteristics of all four roles. Regardless of the role or roles adopted, the issues of control, trust, dependency, identification and expression of feeling remain. These issues have consequences for adult relationships. The major consequences are a sense of powerlessness, inadequacy, shame and guilt, perfectionism and loneliness.

These clinical data are supplemented by data from controlled studies that suggest that children of alcoholics may be at risk for a variety of behavioural, psychological and cognitive deficits. Some studies of academic performance report lowered functioning in children of alcoholics.¹²⁰ Studies of intellectual functioning, distinct from academic performance, have described significantly lowered levels of intellectual functioning in children of alcoholics.¹²¹ Results from extensive structured interviews with children of alcoholics have revealed that these children were frequently diagnosed with a behavioural disorder, an attention deficit disorder with hyperactivity, an oppositional disorder, or a conduct disorder.¹²² In addition, children from alcoholic families, even when the families are intact, do not function well on

¹²⁰J. KNOP et al., "A Prospective Study of Young Men at High Risk for Alcoholism: School Behaviour and Achievement," in *Journal of Studies on Alcohol*, 46 (1985), pp. 273-278.

¹²¹L. BENNETT, S. WOLIN and D. REISS, "Cognitive, Behavioural and Emotional Problems Among School-age Children of Alcoholic Parents," in *American Journal of Psychiatry*, 145 (1988), pp. 185-190. See also R. TARTER, T. JACOB and D. BREMER, "Cognitive Status of Sons of Alcoholic Men," in *Alcoholism: Clinical and Experimental Research*, 13 (1989), pp. 232-235.

¹²²F. EARLS et al., "Psychopathology in Children of Alcoholic and Antisocial Parents," in *Alcoholism: Clinical and Experimental Research*, 12 (1988), pp. 481-487. See also W. REICH et al., "Psychopathology in Children of Alcoholics," in *Journal of the American Academy of Child and Adolescent Psychiatry*, 32 (1993), pp. 995-1002.

measurers of emotional and behavioural adjustment.¹²³ It has been suggested that these deficits in functioning levels are due to negative life events, less supportive parents and inconsistent parental discipline.¹²⁴

The adolescent children of alcoholics have been studied both in conjunction with other age groups and as a unique group. Adolescence is a particularly vulnerable stage for the children of both alcoholics and nonalcoholics. This period is characterized by unique biological and psychosocial integrations, a new cognitive developmental stage, personal independence, and sometimes experimentation with substance abuse. Adolescence may, therefore, become a time of increased risk for significant emotional problems (anxiety and depression) and health problems (eating disorders). In children of alcoholics, the challenges of this stage may interact with family stress to increase the probability of risk. Several studies have demonstrated that alcoholism is more prevalent among adolescents who have an alcoholic parent than among other adolescents.¹²⁵ Adolescent alcohol abuse may not result solely from peer pressure and peer identification. Parents as models and parents as socialization agents appear to play a significant role in the adolescent's adoption of alcohol

¹²³BENNETT, WOLIN and REISS, "Cognitive, Behavioural and Emotional Problems," pp. 185-190. See also M. HICKS and T. CORNILLO, "Treating Jealousy as a System Dynamic in Recovering Alcoholic Families: An Application of the Social Network Model of Recovery," in *Contemporary Family Therapy*, 15 (1993), pp. 381-393.

¹²⁴M. ROOSA, "Mothers' Parenting Behaviour and Child Mental Health in Families with a Problem Drinking Parent," in *Journal of Marriage and the Family*, 55 (1993), pp. 107-117.

¹²⁵A. VON KNORRING, "Annotation: Children of Alcoholics," in *Journal of Child Psychiatry and Psychology and Allied Sciences*, 32 (1991), pp. 411-421.

abuse as a coping mechanism.¹²⁶ When parents do not abuse alcohol or are abstainers and when they use appropriate socialization techniques (support and control), their adolescent sons and daughters are less likely to abuse alcohol and are less likely to be unduly influenced by peer pressure.

A balanced view of the effects of parental alcoholism on children is found in the following quotation:

In summary, many studies have shown parental alcoholism to have adverse effects on their children's school performance. Children of alcoholics, as a group, seem to display increased rates of conduct disorder, hyperactivity, delinquency and are also at an increased risk of abuse and neglect. All these factors may contribute to poor school performance... Alcoholism is disruptive to family life, but the nature of the link between children's specific outcomes and parental alcoholism is vague. It is clear that parental alcoholism is associated with an increased incidence of child symptomatology ... not all children from alcoholic families become future alcoholics or show apparent emotional, physical or psychiatric disorders.¹²⁷

Children of alcoholics, like any other group of children are a diverse group and, therefore, not all will suffer irreparably from parental alcoholism.¹²⁸ Children also differ in resiliency capacity. Also, if the alcoholic parent(s) has/have recovered or is/are in recovery, family

¹²⁶G. BARNES, M. FARRELL and A. CAIRNS, "Parental Socialization Factors and Adolescent Drinking Behaviours," in *Journal of Marriage and the Family* 48 (1986), pp. 27-36. See also D.A. DAWSON and B.F. GRANT, "Family History of Alcoholism and Gender. Their Combined Effects on *DSM-IV* Alcohol Dependence and Major Depression," in *Journal of Studies on Alcohol*, 59 (1998), pp. 97-106.

¹²⁷A. VON KNORRING, "Annotation: Children of Alcoholics," pp. 411-412.

¹²⁸R. SEILHAMER, T. JACOB and N. DUNN, "The Impact of Alcohol Consumption on Parent-Child Relationships in Families of Alcoholics," in *Journal of Studies on Alcohol*, 54 (1993), pp. 189-198.

members may achieve levels of adjustment and functioning that are very similar to the levels observed in non-alcoholic families.¹²⁹

Although scientists may not be capable of predicting the precise and inevitable effects of parental alcoholism on individual children, there is considerable evidence that at least some children will be seriously and adversely affected by parental alcoholism. Alcoholic parents may not consistently provide a secure, organized and predictable environment required for many children to negotiate developmental challenges without undue stress. In addition, the alcoholic parent is often self absorbed and emotionally absent. If such is the case, the children may not have seen modelled (and experience through interaction) affection, support, encouragement, guidance and reasoned problem solutions.

Conclusions

The general theme of this chapter is the impact of alcoholism on adaptation to marital rights and obligations. Individuals utilize their unique personalities and components of their personalities (affect, cognition, motivation) to fulfill interpersonal, marital and parental obligations. The early search for a unique alcoholic personality was not successful. This lack of success did not deter researchers from utilizing the concept of personality and the investigation of alcoholism's impact on various personality functions yielded meaningful data.

The impact of alcoholism on affective development has been most economically studied through the *MMPI*, MacAndrew's factor analysis of *MMPI* scores, the *Baron Ego Strength Scale* and the AA literature. These sources reveal a profile of the alcoholic as an

¹²⁹V. CALLAN and D. JACKSON, "Children of Alcoholic Fathers and Recovered Alcoholic Fathers: Personal and Family Functioning," *ibid.*, 47 (1986), pp. 180-182.

individual who experiences negative affect (depression, anxiety and low self-esteem). The continued abuse of alcohol does not allow for escape because it eliminates opportunities and experiences conducive to personality maturation and emotional (affective) development. An early study of problem drinkers revealed "that most alcoholics under investigation were still childish, emotionally sensitive, and grandiose."¹³⁰ Since there is a positive correlation between severity of dependence on alcohol and negative affect, it is reasonable to assume that the more serious the individual's involvement with alcohol the greater the interference to adequate and predictable affective involvement with others. The *bonum coniugum* and the *bonum prolis* of marriage demand at least a minimum level of affective and interpersonal involvement. The material in Chapter One can be used to determine the level of interference with affective functioning and whether this level is incompatible with the internal freedom necessary for the exercise of discretionary judgment and whether this level is incompatible with assuming essential marital obligations.

The approach to the assessment of alcoholism's impact on cognitive functioning has been through the study of cognitive style, cognitive processes and inaccurate cognitions. Cognitive style includes field dependence/independence, locus of control and stimulus intensity modulation. Alcoholics tend to rely on external rather than internal cues (field dependent), to perceive themselves as externally controlled (external locus of control) and to be stimulus augmenters (overestimate stimulus intensity). It remains to be determined whether these cognitive style differences precede alcohol abuse or are the result of the effect of alcohol on the organism. It is clear that alcohol does have an impact on the

¹³⁰*Twelve Steps and Twelve Traditions*, p. 123.

neurotransmitter systems involved in the cognitive processing of input. Cognitive processing is temporarily impaired with acute-intoxication and can be permanently impaired by chronic alcoholism. Bandura's hypothesized constructs (*symbolizing capacity, forethought capacity, vicarious capacity, self-efficacy capacity*) that mediate between cognitive processes and observed behavior will be rendered less efficacious by inaccurate input.

An assessment of the alcoholic's degree of cognitive impairment and the determination of compatibility/incompatibility with the exercise of the cognitive processes involved in the human act of consent are the task of both the expert witness and the judge.¹³¹ In any event, the marital candidate must be capable of a proportionate understanding of the self, the other and marriage (rights and obligations). In addition, the cognitive capacity to understand, assume and fulfill obligations must be present.

Motivation is conceptually but not existentially distinct from affect and cognition. Individuals are motivated by goals (internalized incentives) because of their understanding of and expectation that the attainment of these goals will increase positive affect and decrease negative affect. Motivation is, therefore, grounded in affective and cognitive functioning. If affect and cognition are inaccurate, motivation will also be inaccurate. The degree of accuracy in cognition, affect and motivation determines the degree of personality integration and, indirectly, the level of internal freedom. Informed valid consent requires proportionate internal freedom. Clearly, if a person is driven by a compulsion to consume alcohol and if motivation to consume alcohol is incompatible with motivation to respect marital rights and

¹³¹Neuropsychological instruments have been and are being refined. These instruments can provide quite an accurate estimation of level of cognitive deterioration.

fulfill marital obligations, a disproportionality exists between level of personality maturation and the requirements for valid consent. Affect, cognition and motivation impact on interpersonal relationships and interpersonal relationships impact on the *bonum coniugum* and the *bonum prolis*.

Interpersonal relationships have been studied through the investigation of social skills. R. Riggio's insightful framework includes categories of social skills. An integration of the information contained in these categories of effective interpersonal functioning with the alcoholic's affective states, revealed through *MMPI* testing, justifies the conclusion that some alcoholics will experience inadequate social skill development and less than rewarding interpersonal relationships. Interpersonally at risk alcoholics will be at risk for the establishment of an intimate marital relationships.

A marital relationship requires commitment, perseverance in commitment, the ability to engage in *companionate love* and the ability to develop a mutually rewarding interpersonal heterosexual relationship. If alcoholism correlates with emotional immaturity and a need to escape from the responsibility of commitment and an interpersonal relationship, then the alcoholic's capacity for consent can be questioned with justification. The anxiety, fear, depression and less-than-positive self-image characteristic of the alcoholic (*MMPI*) may render him/her vulnerable to *passionate love* and a weak candidate for *companionate love*. In addition, the interpersonal violence exhibited by some alcoholics may be a clear indication that the right to marry should not be exercised until effective treatment has been procured. The capacity to establish an interpersonal relationship is also related to parenting ability.

Perhaps the most essential parental ability is the ability to be emotionally present to the child as developmental stages are progressively negotiated. The alcoholic who is focused on alcohol and who is impaired, affectively, cognitively and interpersonally, may not be emotionally present and may not be capable of providing the required secure and predictable family environment. Research on adult children of alcoholics and on children in families centered around alcohol suggests that parental alcoholism interferes with facile progression through developmental stages. An alcoholic who cannot understand, cannot assess (cognition) and cannot assume the basic obligations inherent to the parenting role has an ambiguous right to attempt marital consent. The incompatibility between alcoholism and capacity to elicit marital consent will be the subject of Chapter Three.

CHAPTER THREE

ALCOHOLISM AND THE INCAPACITY TO ELICIT MARITAL CONSENT

INTRODUCTION

The Church's teaching on the vocation of marriage can be found in the papal encyclicals and in conciliar documents. The canons of the Code on marriage, attempt to synthesize, with accuracy and in legal terms, the essential concepts expressed in these encyclicals and documents. Tribunal judges interpret and apply the content of the canons in their decisions regarding the capacity/incapacity to elicit marital consent. Canon 1095 subdivides incapacity into three species. In the first two paragraphs of this canon, incapacity arises from a defect in the psychological act of consent itself.¹ The human and juridic act of consent is invalid because it is lacking in an essential and constitutive element (c. 124, §1). Canon 1095, 1° implies that the act of consent cannot be initiated because the contractant is unable to understand its speculative content. It reflects the scholastic maxim: *Nihil volitum nisi prius cognitum*. The contractant is unable to comprehend that consent results in a conjugal bond (with essential rights and obligations) between two persons endowed with equal dignity. If, on the other hand, the contractant is able to grasp the speculative content of consent but is incapable of a proportionate critical evaluation of the implications of consent for the self and the other, then the sufficient discretionary judgement of c. 1095, 2° is not present.² In c.

¹See M.F.POMPEDDA, "Incapacity to Assume the Essential Obligations of Marriage," in R.M. SABLE (ed.), *Incapacity for Marriage, Jurisprudence and Interpretation: Acts of the 111 Gregorian Colloquium*, Rome, Pontificia Universitas Gregoriana, 1987, p. 172. Pompedda states that positing a distinction between what is 'subject' and what is 'object' in matrimonial consent will avoid equivocations in the application of c. 1095.

²Several authors maintain that 1° of c. 1095 is redundant because it is absorbed in 2° of the same canon. See R.BURKE, "Canon 1095, 1° and 2°", *ibid*, p. 125. See also A. MENDONÇA "Consensual Incapacity for Marriage," in *The Jurist*, 54 (1994), p. 505.

1095, 3°, the source of incapacity is at least conceptually distinct from the act of consent itself. The act itself could be adequate. However, objective obligations external to the contract determine incapacity. The absence of the capacity to assume the essential obligations and not the absence of the capacity to know, estimate and choose renders the act of consent invalid.³ This species of incapacity reflects the natural law principle expressed in positive terms by Roman law as: *Nemo potest ad impossibile obligari*. Canon 1095, as a statement of the three species of incapacity, follows logically from the content of cc. 1055 - 1057.

The main theme of this chapter, therefore, concerns the theological (magisterial) and juridical natures of marriage, its essential elements and properties and the nature of marital consent. Because scientific data and jurisprudence admit that alcoholism is likely to affect marital consent in its various aspects, we will also examine in depth the relationship between alcoholism and the first two species of incapacity identified in c. 1095 with particular reference to relevant Rotal jurisprudence. The hypothesis of this chapter is: As a disorder which invariably affects the human mind, if sufficiently serious, alcoholism is incompatible with the use of reason and the discretionary judgement necessary for eliciting valid marital consent.

³In some individual cases, a distinction between paragraph 2 and 3 of c. 1095 may not be totally clear. If the contractant believes he/she possesses the capacity to assume and yet in reality does not, does he/she have sufficient self-knowledge and internal freedom (constitutive elements of discretion of judgment)?

3.1 - The nature of marriage

The introductory canon on the sacrament of marriage in the 1983 Code describes marriage (*matrimonium in facto esse*) in terms of a covenant, and identifies its material object (a man and a woman), its formal object (a partnership of their whole lives), its ends (the good of the spouses and the procreation and upbringing of offspring) and its sacramentality. Heterosexuality is implied in its material object. Indissolubility and unity are included in its formal object. Canon 1055, §1, states: "The marriage covenant, by which a man and a woman establish between themselves a partnership of their whole life, and which of its own very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children, has, between the baptised, been raised by Christ the Lord to the dignity of a sacrament."⁴

3.1.1 - The covenant

⁴"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 sacramento dignitatem inter baptizatos evectum est." (*Codex iuris canonici, auctoritate Ioannis Paul PP. II promulgatus, fontium annotatione et indice analytico - alphabetico auctus*, Romae, Libreria editrice Vaticana, 1989). English translation in *The Canon Law Letter and Spirit: A Practical Guide to The Code of Canon Law*, prepared by THE CANON LAW SOCIETY OF GREAT BRITAIN AND IRELAND IN ASSOCIATION WITH THE CANADIAN CANON LAW SOCIETY, Collegeville, MN, 1995. (Future references to the canons of the 1983 code have the following format: c. for canon and cc. for canons, followed by the canon number[s]). The Code of Canons of the Eastern Churches (promulgated on 18 October 1990) presents marriage in c. 776 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 et 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 PP. II promulgatus*, Romae, Typis polyglottis Vaticanis, 1990).

The Pio-Benedictine Code defined marriage in terms of a contract. At the time of its promulgation, the theology of marriage was influenced largely by contractual theory accepted by theologians and canonists from the eleventh century.⁵ In the 1983 Code, it is clear that the terms covenant (c.1055, §1) and contract (c. 1055, §2) refer to the same reality. T. Mackin states that “what the covenanting act creating a marriage creates is a contract” (a natural institution) and this contract, between the baptized is a sacrament.⁶ The preference for the word “covenant”, in the opening paragraph of c. 1055, is a reflection of a desire to express the dignity and sacredness of the marital state through the use of biblical language. The word “covenant” also captures the reality of the parallel between the Christ/Church relationship and the spouse/spouse relationship as expressed by St. Paul.⁷ The covenant between Christ and his people created the Church as a sacrament; the valid marital covenant between the baptized actualizes marriage as a sacrament. The word “covenant” also implies exclusivity and indissolubility.

3.1.2 - The partnership

The Fathers of the Second Vatican Council describe marriage as “The intimate community of life and love ...”,⁸ that is, a *partnership* of conjugal life and love. These, or

⁵P.F.PALMER, “Christian Marriage: Contract or Covenant?” in *Theological Studies*, 33 (1972), p. 636.

⁶T. MACKIN, *What is Marriage?*, Ramsey, NJ, Paulist Press, 1982, p. 288.

⁷*Ephesians* 5: 22-33.

⁸SECOND VATICAN COUNCIL, Pastoral Constitution on the Church in the Modern World, *Gaudium et spes* [= GS], 7 December 1965, no. 48, in *Acta Apostolicae Sedis* [=AAS], 58 (1966), p. 1067. English translation adapted from A. FLANNERY (ed.), *Vatican Council II: The Conciliar and Post Conciliar Documents*, Northport, NY, Costello

similar terms, were not new as expressions of the object of marital consent. Roman law contains the expression *consortium omnis vitae*.⁹ In the middle ages, Peter Lombard chose the phrase “conjugal society” (“coniugalis societas”)¹⁰ and St. Thomas Aquinas referred to it as the “conjugal association” (“associatio coniugalis”).¹¹

Prior to the Second Vatican Council, two papal encyclicals emphasized the significance of the partnership of conjugal love. Leo XIII includes within the “completeness of marriage ... the mutual duties of husband and wife ... to have such feelings for one another as to cherish always very great mutual love, to be ever faithful to their marriage vows, and to give one another an unfailing and unselfish help.”¹² Pius XI presents an even more

Publishing Company, 1987, p. 950.

⁹Modestinus defines marriage as: “Nuptiae sunt coniunctio maris et feminae et consortium omnis vitae, divini et humani iuris communio.” (*Digest*, 23, 2, 1). See also D.E. FELLHAUER, “The *Consortium omnis vitae* as a Juridical Element of Marriage” in *Studia canonica* [=SC], 13 (1979), pp. 15-16.

¹⁰*Liber IV Sententiarum*, dist. 28, cc. 3-4: “Cum igitur sic conveniunt, ut dicat vir: Accipio te in meam coniugem, et dicat mulier: Accipio te in meum virum; his verbis vel aliis idem significantibus exprimitur consensus non carnalis copulae, vel cohabitationis corporalis, sed coniugalis societatis; ex qua oportet eos cohabitare, nisi forte causae religionis pari voto corporaliter separentur, vel ad tempus, vel usque in finem.”

¹¹*Summa theologiae Supplementum*, q. XLVIII, a. 1, in corp.: “Dicendum quod consensus qui matrimonium facit, est consensus in matrimonium, quia effectus proprius voluntatis est ipsum volitum. Unde sicut carnalis copula se habet ad matrimonium, ita consensus qui matrimonium causat, est in carnalem copulam. Matrimonium autem, ut supra dictum est, non est essentialiter ipsa coniunctio carnalis, sed quaedam associatio viri et uxoris in ordine ad carnalem copulam et alia quae ex consequenti ad virum et uxorem pertinent, secundum quod eis datur potestas in invicem respectu carnalis copulae. Et haec associatio coniugalis copula dicitur. Unde patet quod bene dixerunt illi qui dixerunt quod consentire in matrimonium est consentire in carnalem copulam implicite, non explicite.”

¹²*Arcanum divinae sapientiae* [= *Arcanum*], 10 February 1880, in *Acta Sanctae Sedis* [=ASS], 12 (1879 - 1880), pp. 385-402. English translation adapted from C. CARLEN (ed.) [= CARLEN], *The Papal Encyclicals, 1878-1903*, vol. 2, Wilmington, NC, McGrath

definitive statement regarding the spousal relationship as the formal object of marital consent. He states: "This mutual molding of husband and wife, this determined effort to perfect each other, can ... be said to be the chief reason and purpose of matrimony ...".¹³ Admittedly, the above references do not directly equate the concept partnership with the formal object of marital consent. The concept, therefore, did not attain juridical status prior to the Second Vatican Council.

The marriage legislation *coetus* of the Pontifical Commission for the Revision of the Code of Canon Law, after several changes, determined that an acceptable phrase would be *totius vitae consortium*.¹⁴ The term *consortium* is not defined in canon law. This reluctance to define is fortuitous, since the term now remains sufficiently extensive to include identified, identifiable and culturally diverse constitutive elements.¹⁵

Publishing Company, 1981, pp. 31-32.

¹³*Casti connubii* [= *Casti connubii*], 31 December 1930, in *AAS*, 22 (1930), p. 543. English translation adapted from CARLEN, *The Papal Encyclicals, 1903 - 1939*, vol. 3, p. 395.

¹⁴PONTIFICIA 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*, (Patribus Commissionis stricte reservata), Città del Vaticano, Typis polyglottis Vaticanis, 1981, pp. 244-245. See also J. HUBER, "Coniunctio, communio, consortium: observationes ad terminologiam notionis matrimonii," in *Periodica*, 75 (1986), pp.401-408.

¹⁵A. MENDONÇA, "The Theological and Juridical Aspects of Marriage," in *SC*, 22 (1988), pp. 274-275. See also FELLHAUER, "The *Consortium omnis vitae* as a Juridical Element of Marriage," pp. 157-158; C. MURTAGH, "The Jurisprudential Approach to the *consortium vitae*," in *SC*, 9 (1975), pp. 322-323; G. SHEEHY, "Animadversiones quaedam in 'matrimonii essentiale aliquod elementum'," in *Periodica*, 75 (1986), pp. 124-126.

What are the identified and distinct elements of the *consortium*? Other canons, in the Code, indirectly provide the minimum number of elements in the *consortium*. Canon 1055, §2 appears to infer that sacramentality is a property of marriage since a non-sacramental valid marriage between the baptized is an impossibility. Canon 1056 mentions two essential properties of marriage. Canon 1099 implies that error (if it determines the will), concerning the unity, indissolubility and sacramental dignity of marriage, will render it invalid. Canon 1101, §2 claims that a marriage will not be valid if there is an exclusion, through a positive act of the will, of an essential property or essential element of marriage. Canon 1134 speaks to the permanence (indissolubility) and exclusivity (unity) of marriage and canon 1135 mentions the equal rights and obligations inherent to the partnership. The conclusion that is admissible from these canons, c.1055, §1 and from *Gaudium et spes*' doctrine is that the *consortium totius vitae* is the juridical equivalent of "the intimate community of life and love" and the marriage and that its identified constitutive elements, from a legislative viewpoint, are the *bonum coniugum*, the *bonum prolis*, the *bonum fidei* (unity) and the *bonum sacramenti* (indissolubility).¹⁶

3.1.3 - Conjugal love

Conjugal love is an elusive concept that appears to defy definition. This difficulty with definition, is undoubtedly due to cultural, personality and interindividual differences. It could be stated that Christian conjugal love is essentially a unique (because of its sacramental dignity), specific (between two sexually distinct persons) and intimate interpersonal

¹⁶B.E. FERME, "The Shifting Boundaries of Incapacity for Marriage: Problems of Interpretation and Application," in *Forum*, 3 (1992) 1, p.31.

relationship that includes the communion of bodies and the mutual communion and reception of the conjugal self as gift. Its status as an aspect of the *bonum coniugum* is well established in magisterial teaching.

Leo XIII, in *Arcanum*, places conjugal love within the context of marital rights and obligations.¹⁷ Pius XI suggests that conjugal love is a primary good in marriage and has as its purpose the spiritual development of the spouses.¹⁸ In so doing he indirectly affirms the sacramental nature of marriage; that is, that acts of conjugal love (sexual and non-sexual) are instruments of or they have the potential to concretize sacramental grace. As the spouses give the sacrament to each other at the time of consent, so also are they empowered to “make present” Christ’s sacramental grace throughout the marriage. Pius XII in his allocution to the Italian Catholic Union of Midwives (29 October 1951),¹⁹ *Gaudium et spes*,²⁰ Paul VI in *Humanae vitae*,²¹ John Paul II in *Familiaris consortio*,²² all suggest that conjugal love, when

¹⁷*Arcanum*, nn. 11,12 in CARLEN, *The Papal Encyclicals, 1873-1903*, vol. 2, pp. 31-32.

¹⁸See *Casti connubii*, n. 23 in CARLEN, *The Papal Encyclicals, 1903-1939*, vol. 3, p. 395.

¹⁹See *AAS*, 43 (1951), pp. 835-854.

²⁰See *GS*, n. 50, in FLANNERY, *The Conciliar and Postconciliar Documents*, p. 954.

²¹*Humanae vitae* [= *HV*], n. 9, in *AAS*, 60 (1968), pp. 486-487.

²²See *Familiaris consortio* [= *FC*], n. 18 in A. FLANNERY (ed.), *Vatican II: More Postconciliar Documents*, Grand Rapids, MI, Wm. B. Eerdmans Publishing Co., 1982, pp. 828-829.

mutually given, will facilitate the spiritual and psychological development of the parties (the good of the spouses). Despite this centrality of conjugal love for marriage in magisterial teachings, it has not been consistently recognized as an essential juridical element for marriage.

V. Fagiolo was apparently the first Rotal judge to render an affirmative decision grounded in the absence of conjugal love.²³ He stated that the absence of conjugal love signalled a defect in consent and that conjugal love and consent are equivalent. Fagiolo's decision was appealed and judged *coram* Palazzini.²⁴ Palazzini rejected Fagiolo's view and agreed with Navarrete who claimed that conjugal love plays an "integrative" role in marriage but that it is not a "constitutive" element of marriage.²⁵ The difficulty with Fagiolo's analysis may reside, partially, in the assertion that conjugal love and consent are equivalent.

At the moment of consent the integrative source of one's wanting, willing and acting must be, not solely physical attraction, but the spiritual and physical well-being of the other. Within the *matrimonium in facto esse*, the grace of the sacrament can interact with willingness, intention, capacity to love and capacity to learn about conjugal love through practice. When these conditions exist, conjugal love will be a dynamic within marriage. What is required, therefore, at the time of consent is the capacity, the willingness and the intention

²³c. FAGIOLO, 30 October 1970, in *SRR Dec.*, 62 (1970), pp. 978-990.

²⁴c. PALAZZINI, 2 June 1971, *ibid.*, 63 (1971), pp. 467-479.

²⁵U. NAVARRETE, *Structura iuridica matrimonii secundum Concilium Vaticanum II: momentum iuridicum amoris coniugalis*, Roma, Pontificia Universitas Gregoriana, 1968, p. 152.

to give the conjugal self to the other and receive the conjugal self of the other. Both individuals are potential actualizers of conjugal love. This analysis can be used to explain the presumed validity and sacramentality of arranged marriages.²⁶

A definitive resolution to the controversy over the juridical status of conjugal love is not likely to emerge in the immediate future. Several prominent canonists (J. Serrano,²⁷ Z. Grocholewski,²⁸ G. Versaldi,²⁹ L. Wrenn,³⁰ and A. Mendonça³¹) argue that conjugal love

²⁶See P. PALMER, "Needed: A Theology of Marriage," in *Communio*, 1 (1974), p. 248.

²⁷J.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.

²⁸Z. GROCHOLEWSKI, "De 'communione vitae' in novo schemate 'De matrimonio' et de momento iuridico amoris coniugalis," in *Periodica*, 68 (1979), p. 479. For this canonist, conjugal love must be willed for consent to be valid.

²⁹G. VERSALDI, "Elementa psychologica matrimonialis consensus: momentum iuridicum vitae affectivae, praesertim subconsciae, eiusdemque influxus in intellectum et voluntatem," *ibid.*, 71 (1982), pp. 252-253. Versaldi suggests that conjugal love has juridical significance because its presence is a manifestation of the intention to enter into a communion of life.

³⁰L. WRENN, "Refining the Essence of Marriage," in *CLSA Proceedings*, 48 (1986), pp. 21-24. It is difficult to comprehend Wrenn's position. He appears to assert that love is not essential to the *matrimonium in facto esse*. On the other hand, the *bonum coniugum* is, for him, essentially conjugal love. If one does not present and receive or is not capable of presenting and receiving conjugal love, then the marriage is invalid. The focus is consent.

³¹MENDONÇA, "The Theological and Juridical Aspects of Marriage," pp. 280-281. This writer (in reflecting themes found in *GS*, *HV* and *FC*), seems to extend the juridical significance of conjugal love beyond consent and into the *matrimonium in facto esse*. If it is excluded, through a positive act of the will at consent, it invalidates consent (simulation). If it is not present during the unfolding of the marital relationship, an essential element is missing and one could possibly argue in favour of incapacity or exclusion (p. 281).

understood in its proper sense could be recognized as a juridically significant element in marriage. Paul VI's statement in this context cannot be interpreted as an absolute denial of juridical relevance to conjugal love in *matrimonium in fieri*. He explained that love is an element which transcends juridical categorization (all canonists would agree) and that "the juridical reality continues to exist [...] even though love may have totally disappeared" in the *matrimonium in facto esse*.³²

In brief, the reluctance, on the part of some canonists, to accord juridical status to conjugal love is probably based in the ambiguity associated with the term. In marriage, conjugal love exists for the *bonum coniugum* and the *bonum prolis* (if there are children). In reality, therefore, spouses have a right to that kind of conjugal love necessary for the assurance of the *bonum coniugum* and the *bonum prolis*.

3.1.4. - The good of the spouses

Jurisprudence between the *CIC/17* and the *CIC/83* tended to emphasize the *bonum prolis* and to subordinate the *bonum coniugum* to the *bonum prolis*.³³ This subordination was not necessitated by the law itself nor were doctrinal foundations for the *bonum coniugum* lacking from magisterial teachings during this period (*Casti connubii*, *HV*, *FC*). "Mutual help and remedy for concupiscence" is explicitly recognized as a secondary end of marriage in c.1013, §1 of *CIC/17*. Marriage, in its totality, was meant to be one *remedium* for the inner disintegration of human existence caused by sin (concupiscence). Marriage is not just a

³²*The Pope Speaks*, 21 (1976), p. 153. See also *AAS*, 68 (1976), p. 207.

³³See U. NAVARRETE, "Structura iuridica matrimonii secundum Concilium Vaticanum II," in *Periodica*, 56 (1967), pp. 368-369.

remedy because it provides a legitimate forum for the release of sexual tension through sexual conjugal acts. Marriage, in so far as the spouses must provide for the *bona*, occasions opportunities for the exercise of virtue and facilitates the giving of mutual help as remedies for concupiscence. The exercise of virtue releases the individual from the bondage of self, promotes one's self-realization (*bonum*) and one's psychological and spiritual integration and thus reverberates to the good of the other.

Pius XI,³⁴ Paul VI³⁵ and John Paul II³⁶ all present a theological foundation for the canonical development of the *bonum coniugum* in their magisterial teachings. They do not specify the concrete content of the *bonum coniugum* or provide criteria for the identification of its presence.

Gaudium et spes, in n.48, describes marriage as an "intimate community of life and love [...]. It is an institution confirmed [...] for the good of the partners, the children and of society." It has a "very important bearing on [...] the personal development [...] of every member of the family [...]. Thus, the man and woman [...] help and serve each other by their marriage partnership; they become conscious of their unity and experience it more deeply from day to day."³⁷ This conciliar formulation finds its legal expression in c. 1055, §1. In this

³⁴See *Casti connubii*, nn. 24-30 in CARLEN, *The Papal Encyclicals, 1903-1939*, vol. 3, p. 395.

³⁵See *HV*, n. 8, in CARLEN, *The Papal Encyclicals, 1958-1981*, vol. 5, p. 225.

³⁶See *FC*, n. 22 in FLANNERY, *More Postconciliar Documents*, p. 832.

³⁷FLANNERY, *The Conciliar and Post Conciliar Documents*, p. 950.

canon the good of the spouses is legally recognized as an end and essential element of the nuptial covenant.

The juridical status of the *bonum coniugum* was subsequently recognized by several judges including Pinto and Pompedda. In a sentence given on 9 November 1984, Pinto justifies his position as based in the deliberations of the Code Commission³⁸ and went on to identify two constitutive elements of the *bonum coniugum*: “remedy for concupiscence” and “psychosexual complementarity.”³⁹ The latter is an interesting insight since it may, in the future, have some impact on jurisprudential developments for relative incapacity.

Although Pompedda does not specify the elements of the *bonum coniugum*, he does present some guidelines within which the elements might be researched. He states:

What is meant by the term: the conjugal good (the bonum)? ...The CIC/1983 says *bonum coniugum* and it does not say *ad bonum alterius coniugis*. This means it is both the good of the person in himself or herself and the good of the other; but both to the extent that they are both participants in the same reality, the same consortium which is matrimony... We must not confuse what is essential with what is non-essential in this conjugal good.⁴⁰

Among canonical writers who agree that the *bonum coniugum* is essential to marriage, Cormac Burke advocates a restrictive view. He concludes that:

³⁸c. PINTO, 9 November 1984, in *Monitor ecclesiasticus* [=ME], 110 (1985), p. 321. See also *Communicationes*, 9 (1977), p. 123.

³⁹J.M. PINTO GÓMEZ, “Incapacitas assumendi matrimonii onera in novo CIC,” in Z. GROCHOLEWSKI and V. CARCEL ORTI (eds.), *Dilexit iustitiam: studia in honorem Aurelii Card. Sabattani*, Vatican City, Libreria editrice Vaticana, 1984, pp. 29-33.

⁴⁰M.F. POMPEDDA, “De incapacitate adsumendi obligationes matrimonii essentielles: potissimum iuxta Rotalem iurisprudentiam,” in *Periodica*, 75 (1986), p. 149.

For our purpose, in any case, essential elements and essential rights and obligations are not the same thing; essential rights and obligations have to be derived from the essential elements. For instance, if one can say that the *ordinatio ad bonum coniugum* is an essential element, then the rights and obligations deriving from it coincide with those deriving from the three Augustinian *bona*. It is these that provide the basis for defining the essential rights and obligations through the fulfilment of which marriage can attain its institutional ends.⁴¹

Some concepts in this quotation correlate with and others appear to be at variance with the content of *Gaudium et Spes* and c. 1055, §1. Why do the rights and obligations that derive from the *bonum coniugum* have to coincide with those that derive from the three *bona*? As researchers continue to study the meaning of the *bonum coniugum*, it is reasonable to assume that additional rights and obligations will emerge. The circumscription of the juridic status of the *bonum coniugum* could conceivably result in a miscarriage of justice. Burke's emphasis on the "institutional ends" of marriage may obscure the fact that the institution only exists, in reality, among married people. As L. De Luca states: "Marriage is no longer regarded by the legislator as an institution considered abstractly in itself but rather an act brought into existence by two human beings for their material and spiritual welfare."⁴²

Several canonists have responded to the challenge to identify the components of the *bonum coniugum*. T.P.Doyle enumerates the basic elements as "heterosexual companionship,

⁴¹C. BURKE, "The Essential Obligations of Matrimony," in *SC*, 26 (1992), p. 398. See also IDEM, "The Object of the Marital Self-Gift as Presented in Canon 1057, §2," in *SC*, 31 (1997), pp. 417-420.

⁴²L. DE LUCA, "The New Law on Marriage," in *The Catholic Lawyer*, 30 (1985), p. 74.

interpersonal friendship, spiritual and material support.”⁴³ L. Örsy says the good of the spouses comprises “the physical, emotional, intellectual, and spiritual welfare of the couple.”⁴⁴ De Luca’s view is that the “good of the spouses of which the new legislation speaks ought to be seen above all, as the spiritual good of the spouses.”⁴⁵ L. Wrenn recognizes that “clarification of [the components of the *bonum coniugum*] will come gradually through the work of jurisprudence.” For the present, he lists “six of the more obvious qualities that might constitute the essence of the *bonum coniugum*. These are: partnership, benevolence, companionship, friendship, caring, and finally love.”⁴⁶

The components of the *bonum coniugum* will continue to receive clarification through the writings of canonists and in the decisions of judges. Defined elements will be theologically grounded in magisterial teaching and adjusted for cultural differences.

It is clear, from *Gaudium et spes*, that the Fathers of the Second Vatican Council were solicitous to portray marriage not only as a grace-filled means to salvation but also as a human reality, designed by the Creator, for the spiritual and psychological fulfilment of all family members (GS, nn. 48-52). Unity and indissolubility are deemed indispensable because they provide the essential foundations for a secure relationship. Within a secure context, with

⁴³T.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.

⁴⁴L. ÖRSY, *Marriage in Canon Law. Texts and Comments. Reflections and Questions*, Wilmington, DE, Michael Glazier, 1988, p. 53.

⁴⁵DE LUCA, “The New Law on Marriage,” p. 74.

⁴⁶WRENN, “Refining the Essence of Marriage,” p. 16.

the passage of time and with divine assistance, individuals can grow spirituality and experience peace and serenity. In all cultures and circumstances unselfish giving, in the context of the marital community, promotes the natural and spiritual good of the spouses and the procreation and upbringing of children.

3.1.5 - The procreation and upbringing of children

Pius XI re-emphasizes the Church's traditional teaching on procreation and education as a primary right and responsibility within marriage when he states that "amongst the blessings of marriage, the child holds first place ... and the blessing of offspring, however, is not completed by the mere begetting of them, but something else must be added, namely proper education of the offspring."⁴⁷ He does not elaborate on the educational component of the *bonum prolis* except to add that, "they should be begotten lovingly and educated religiously."⁴⁸

The Second Vatican Council, in *Gaudium et spes*, essentially repeated Pius XI's teaching when it said: "By its very nature, the institution of marriage and conjugal love are ordered toward the procreation and education of offspring," and "children are the supreme gift of marriage and they greatly contribute to the good of parents themselves."⁴⁹ These

⁴⁷See *Casti connubii*, nn. 11, 16, in CARLEN, *The Papal Encyclicals, 1903-1939*, vol. 3, pp. 393-394.

⁴⁸See *Casti connubii*, n. 17, *ibid.*, p. 394. See also ST. THOMAS AQUINAS, *Summa theologiae, Supplementum*, q. XLIX, a. 2.

⁴⁹"Indole autem sua naturali, ipsum institutum matrimonii amorque coniugalis ad procreationem et educationem prolis ordinantur...Matrimonium et amor coniugalis indole sua ad prolem procreandam et educandam ordinatur. Filii sane sunt praestantissimum matrimonii donum et ipsorum parentum bonum maxime conferunt" (GS, nn. 48, 50). See also FLANNERY, *The Conciliar and Post Conciliar Documents*, pp. 950, 953.

magisterial formulations and the teachings of Paul VI⁵⁰ and John Paul II⁵¹ reflect a desire to persevere and defend the *bonum proles* as an essential component of marriage. In the minds of the Pontiffs, cited above, both procreation and education are constitutive elements of the *bonum proles*. The present legislator re-expresses this intent in c. 1055, §1. The 1917 Code did refer to the “procreation and education” of the offspring as the primary end of marriage (c. 1013, §1).⁵² However, the perpetual and exclusive right to acts apt for the generation of children (c. 1081, §1)⁵³ was the only element of the *bonum proles* that attained juridical attention in the jurisprudence following the 1917 Code. Admittedly, it was and is difficult (due to cultural differences) to translate the rights and obligations associated with education into a universally acceptable juridical terminology.

In the canon on consent (c. 1057), there is no mention of the right to acts apt for generation. The formal object of marriage is the “partnership of their whole life.” The partnership is manifest when conjugal rights are respected and conjugal obligations are fulfilled. Rights and obligations specific to the matrimonial state are its formal object because

⁵⁰See HV, n.9 in CARLEN, *The Papal Encyclicals, 1958-1981*, vol.5, p.225.

⁵¹See FC, n.11 in FLANNERY, *More Postconciliar Documents*, pp. 822-823.

⁵²“Matrimonii finis primarius est procreatio atque educatio proles; secundarius mutuuum adiutorium et remedium concupiscentiae.” (*Codex iuris canonici, Pii X Pontificis Maximi iussu 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.*

⁵³Can. 1081, §1 - “Consensus matrimonialis est actus voluntatis quo utraque pars tradit et acceptat ius in corpus, perpetuum et exclusivum, in ordine ad actus per se aptos ad proles generationem.”

they are the constituent elements of the partnership and they derive from the *bona* (cc. 1055, 1056, 1135, 1136). A right of marriage (and hence obligation) is not a right to children but a right to human sexual acts apt for generation.⁵⁴ It is through this act, totally open to the possibility of conception, that spouses (uniquely) express the gift of the (total conjugal) self and the reception of the other.⁵⁵ Because of the priority of responsible parenthood, spouses may mutually agree to suspend the exercise of the right (not the right to the act itself).⁵⁶

The right and obligation implied in the *bonum prolis* includes the fetus' right to life from the moment of conception⁵⁷ and, later, the child's right to a religious, social and cultural upbringing.⁵⁸ The new Code does not advert directly to the right of the child to an education but it does state in c. 1136 that "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

⁵⁴PIUS XII, "Allocution to the Italian Catholic Union of Midwives," 29 October 1951, in *AAS*, 43 (1951), p. 845. See also T.P. DOYLE, "Moral Inseparability of the Unitive and Procreative Aspects of Human Sexual Intercourse," in *ME*, 109 (1984), p. 456.

⁵⁵See T.P. DOYLE, "The Theology of Marriage: Where We Are Today," in *The Priest*, 39 (1983), p. 37; C. BURKE, "Procreativity and the Conjugal Self-Gift," in *SC*, 24 (1990), pp. 47-49.

⁵⁶See *HV*, n. 10, in CARLEN, *The Papal Encyclicals, 1958 - 1981*, vol. 5, p. 225.

⁵⁷J.R. KEATING, *The Bearing of Mental Impairment on the Validity of Marriage: An Analysis of Rotal Jurisprudence*, Rome, Gregorian University Press, 1964, p. 189. See also c. EGAN, 20 January 1978, in *SRR Dec*, 70, (1978), p. 39.

⁵⁸See c. PINTO, 3 December 1982, in *SRR Dec.*, 74 (1982), pp. 565-575. See also c. RAGNI, 18 December 1984, *ibid.*, 76 (1984), p. 622; SHEEHY, "Animadversiones quaedam in matrimonii essentiale aliquod elementum," pp. 123-124.

their children.” Canon 217 states: “Since Christ’s faithful are called by baptism to lead a life in harmony with the gospel teaching, they have the right to a Christian education, which genuinely teaches them to strive for the maturity of the human person and at the same time to know and live the mystery of salvation.” There may be cases in jurisprudence where individuals prevent spouses and children from the exercise of the right to obtain a Christian education through church attendance and attendance at Catholic schools. It could be argued that this is a right derived from the *bonum coniugum* and the *bonum prolis*. Would the exclusion of this right, through a positive act of the will, invalidate consent?

An awareness that the quality of the spousal relationship impacts on the child’s psychological and spiritual development is not missing from magisterial teachings.⁵⁹ No doubt, this awareness in magisterial teachings will be reflected in the work of canonists and theologians as they attempt to complete and develop the meaning of the *bonum prolis*.

3.1.6. - The sacramentality of marriage

Canon 1055, §2 addresses the inseparability of the sacrament and the marriage contract for the baptized. It was only from the eleventh century that “the *sacramentum* of marriage was explicitly regarded as a *sacramentum-signum*, a sacred sign of a saving reality”⁶⁰ or a making present of God’s love and faithfulness through the power invested in Christ. However, Gen. 2:23 teaches that marriage is a perpetual and exclusive covenant

⁵⁹*Arcanum*, n. 15; *Casti connubii*, n. 90; *GS*, nn. 48, 50; *HV*, n. 21; *FC*, n. 11.

⁶⁰E. SCHILLEBEECKX, *Marriage: Human Reality and Saving Mystery*, New York, Sheed and Ward, 1965, p. 330. See also W. KASPER, *Theology of Christian Marriage*, New York, The Seabury Press, 1980, pp. 31-34.

between a man and a woman. This covenant is the image of and is similar to God's covenant with man. This covenant is "similar to" because it images and reproduces God's love, faithfulness, creative power, etc. This biblical teaching is confirmed by Christ in Mt. 5:31 and Mk. 10:6. Marriage, therefore, belongs in the order of creation and in the order of redemption. Paul intimates, in Eph. 5:25, that the natural, exclusive and perpetual union created by God is sacramentalized by Christ. The indissolubility concept of the sacrament⁶¹ and the concept of the mystery of the union between Christ and his Church were integrated by St. Augustine and the scholastics. For St. Augustine and St. Thomas, the *bona* are intrinsically related and express both the purposes and dignity of marriage.⁶² Marriage has dignity because its *bona* integratively express and effect what was intended to give meaning and gives meaning to human existence (offspring, personal love and self-surrender, self-realization, exclusive and perpetual faithfulness). The Second Vatican Council, in *Gaudium et spes* (n. 48), reiterates the purposes and the interrelatedness of the *bona*.⁶³

⁶¹See COMMISSIO THEOLOGICA INTERNATIONALIS, "Propositiones de quibusdam quaestionibus 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. See also 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; IDEM, *Marriage in Canon Law*, pp. 275-277.

⁶²See ST. AUGUSTINE, *De bono coniugali*, XXIV, 32: PL 40, 394 and *De genesi ad litteram*, IX, 7, 12: PL 34, 397. See also ST. THOMAS AQUINAS, *Summa Theologiae*, *Supplementum*, q. XLIX, aa. 1-10; *Casti connubii*, nn. 10-37.

⁶³FLANNERY, *The Conciliar and Post Conciliar Documents*, p. 950.

For St. Augustine the *bonum sacramenti* and indissolubility are equivalent.⁶⁴ Does the *bonum sacramenti* consist only in indissolubility or does it include the sacramentality of marriage? Grocholewski is of the opinion, and jurisprudence seems to support the view, that sacramentality is unique to Christian marriage whereas indissolubility is characteristic also of natural marriages.⁶⁵ Therefore, sacramentality is distinct from the *bonum sacramenti*; that is, conceptually and juridically the two can be distinct. However, since a Christian marriage cannot exist without the presence of both, they are existentially not distinct.⁶⁶ Canon 1101, §2 affirms that a marriage is null when a party, through a positive act of the will, excludes an essential property or element of marriage. The positive act of the will, grounded in the individual's erroneous conception of marriage (*error pernicax*) must prevail over the presumption that the words used convey intent.⁶⁷ Canon 1099 provides to sacramental dignity the same juridic status that it affords to unity and indissolubility. From this De Luca

⁶⁴Z. GROCHOLEWSKI, *De exclusione indissolubilitatis ex consensu matrimoniali eiusque probatione*, Neapoli, M. D'Auria, 1973, p. 38.

⁶⁵Ibid., p. 41.

⁶⁶*Casti connubii*, n. 31.

⁶⁷See J.G. JOHNSON, "Total Simulation in Recent Rotal Jurisprudence," in *SC*, 24 (1990), p. 389. See also DE LUCA, "The New Law on Marriage," p. 88; c. ANNÉ, 11 March 1975, in *Canon Law Digest [=CLD]*, 8 (1973-1977), p. 743; c. STANKIEWICZ, 23 July 1982, in *Periodica*, 72 (1983), pp. 137-138; c. SERRANO, 1 June 1990, in *DE*, 102/1(1991), pp. 23-24.

concludes that "sacramental dignity" is to be interpreted juridically as an essential property.⁶⁸

U. Navarrete also claims that sacramental dignity has equal juridic status with indissolubility.⁶⁹

All canonists do not agree that sacramental dignity is the same as a property from a juridic viewpoint. Faltin, for example, states that "it is clear that sacramentality is an essential element, inseparable and irremovable from the matrimonial contract, with the logical juridical consequence for the makeup of consent spoken of in canon 1099 of the Code of Canon Law."⁷⁰ In any case, if sacramentality is itself excluded (*error pervicax*), as an essential element or as an essential property the marriage can be judged as null.⁷¹

The absence of a belief in the sacrament is a cause for concern among the theologians and canonists.⁷² In the papal document that followed the 1980 Synod of Bishops, John Paul II responds to the question with the following pastoral insights:

⁶⁸DE LUCA "The New Law on Marriage," p. 88. See also SHEEHY, "Animadversiones quaedam in 'matrimonii essenziale aliquod elementum'." pp. 127-128.

⁶⁹See NAVARRETE, *Structura iuridica matrimonii*, p. 66.

⁷⁰D. FALTIN, "L'esclusione della sacramentalità del matrimonio con particolare riferimento al matrimonio dei battezzati non credenti," in *Quarderni studio rotale*, [=QSR], 4 (1989), p. 25. English translation in J.A. ALESANDRO (ed.), *Marriage Studies*, vol. 4, Washington, DC, Canon Law Society of America, 1990, pp. 66-104.

⁷¹See, for example, c. PASQUAZI, 28 July 1960, in *SRR Dec*, 52 (1960), p. 429; c. MASALA, 20 November 1969, *ibid.*, 61 (1969), p. 1034; c. POMPEDDA, 9 May 1970, *ibid.*, 62 (1970), p. 476; c. PINTO, 6 November 1972, *ibid.*, 64 (1972), p. 673; c. AGUSTONI, 27 May 1980, *ibid.*, 72 (1980), p. 391.

⁷²See L. ÖRSY, "The Sacrament of Marriage in the New Code of Canon Law," in *Thought*, 58 (1983), p. 38. See also *Communicationes*, 9 (1977), p. 122; M.F. POMEDDA, "Fede e sacramento del matrimonio – mancanza di fede e consenso matrimoniale: aspetti giuridici," in *QSR*, 2 (1987), pp. 41-71; FALTIN, "L'esclusione della sacramentalità," pp. 5-39.

As for wishing to lay down further criteria for the admission to the ecclesial celebration of marriage, criteria that would concern the level of faith of those to be married, this would above all involve great risks. In the first place, the risk of making unfounded and discriminatory judgements; secondly, the risk of causing doubts about marriages already celebrated, with great harm to Christian communities, and new and unjustified anxieties to the consciences of married couples; one would also fall into the danger of calling into question the sacramental nature of many marriages of brethren separated from full communion with the Catholic Church, thus contradicting ecclesial tradition.⁷³

In this passage, the Pope alludes to the difficulty involved in a determination that absence of faith results in invalidity as well as the fact that anxieties could be generated by investigations and judgements. Through marriage preparation courses, the Church may be able to inspire faith and discuss the benefits of a proper intention and faith for the *matrimonium in facto esse*.

The mutual self-giving that is necessary to establish and maintain a covenant or a community of life and love is not an easy task. The required assistance for the spouses is available through the sacrament (the sign and cause of Christ's grace).⁷⁴ *Gaudium et spes* (n. 48) states: "Spouses, therefore, are fortified and, as it were, consecrated for the duties and dignity of their state by a special sacrament; fulfilling their conjugal and family role by virtue of this sacrament, spouses are penetrated with the spirit of Christ" [...].⁷⁵

⁷³FC, n. 68, in FLANNERY, *More Postconciliar Documents*, p. 873.

⁷⁴T. HORVATH, "The Sacrament of Marriage as Revelation of God," in *Heythrop Journal*, 11 (1970), p. 390. See also, C. ROCCHETTA, "Marriage as a Sacrament Towards a New Theological Conceptualization," in K. DEMMER and A. BENNINMEISER (eds.), *Christian Marriage Today*, Washington, DC, Catholic University Press, 1997, pp. 55-80.

⁷⁵FLANNERY, *The Conciliar and Post Conciliar Documents*, p. 951.

The significance of the sacrament, as sacrament, is that it is a vehicle for God's healing ("fortified") and sanctification ("consecrated"). Within the equal partnership (c. 1135), marriage as gift is actualized. The spouses participate with Christ in the initiation of the gift (consent) and in the actualization of the gift through acts of conjugal love.

3.2 - The nature of consent

In the context of the *matrimonium in fieri*, valid consent can be described as a psychological and juridic act containing the essential elements that constitute it formally as a human act. Canon 1057, §1 and §2 state:

A marriage is brought into being by the lawfully manifested consent of persons who are legally capable. This consent cannot be supplied by any human power.

Matrimonial consent is an act of will by which a man and a woman by an irrevocable covenant mutually give and accept one another for the purpose of establishing a marriage.⁷⁶

Paragraph 1 of this canon affirms that marriage is given its existence through the expressed mutual agreement of the legally capable parties. In Christian marriage, the spouses administer the sacrament to each other (because of their mutual agreement) in the name of the Church. The Church ministers in the name of Christ (this explanation is not entirely accurate for the Oriental tradition). Regardless of the different possible analyses (past and future) of consent, consent as expressed mutual agreement, has been and is likely to be the

⁷⁶"*Matrimonium facit partium consensus inter personas iure habiles legitime manifestatus, qui nulla humana potestate suppleri valet. Consensus matrimonialis est actus voluntatis, quo vir et mulier foedere irrevocabili sese mutuo tradunt et accipiunt ad constituendum matrimonium.*"

consistent teaching of the Church.⁷⁷ The agreement is deliberately willed by both parties and there is a concurrence of wills.

The analysis of the “act of the will” that is currently acceptable in jurisprudence has its origins in Aristotelian philosophy. St. Thomas Aquinas, relying on Aristotle’s framework, states that a human act is one that results from the exercise of the intellect and the will.⁷⁸ The intellect and will are the higher faculties through which the human spirit acts. The intellect and the will are conceptually distinct faculties. The intellect is a cognitive faculty – its goal is the acquisition of knowledge. The will is an appetitive faculty – it aims to possess the good. The intellect’s first task is to form a conceptual understanding of the object. If the will is interested in the object, it moves the intellect to evaluate the object. This evaluation may proceed to a judgement regarding whether or not the object is desirable. If the object is judged to be desirable, the will is moved to want it. Thus, a judgement can be *speculativo-practicum* or *practico-practicum*. When the judgement is *practico-practicum*, the will chooses infallibly.⁷⁹ Canonists do not all agree on the specific components of this process

⁷⁷See ST. THOMAS AQUINAS, *Summa Theologiae, Supplementum*, q. XLV, a. 1; q. LI, a. 1. See also 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*, n. 6; *GS*, n. 48.

⁷⁸*Summa theologiae*, Ia-IIae, q. I, a. 1: “Est autem homo dominus suorum actuum per rationem et voluntatem; unde et liberum arbitrium esse dicitur facultas voluntatis et rationis. Illae ergo actiones proprie humanæ dicuntur quæ ex voluntate deliberata procedunt.”

⁷⁹See P. SIWEK, *Psychologia metaphysica*, Editio septima aucta et emendata, Romae, Apud Aedes Universitatis Gregorianae, 1965, pp. 458-459. See also VERSALDI, “Elementa psychologica matrimonialis consensus,” pp. 179-198; ST. THOMAS AQUINAS, *ibid.*; c. WYNEN, 25 February 1941, in *SRR Dec.*, 33 (1941), pp. 146-147; c. DORAN, 1 July 1988, in *ME*, 114 (1989), p. 332; also published in *Ius ecclesiae [=IE]*, 2(1990), pp. 157-176.

required for valid marital consent. Anné claims a *judicium practico - practicum* is necessary for the rationality of the juridical act.⁸⁰ Mendonça concludes:

While prescinding 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 judgement concerning the desirability of the object to the subject here and now. In other words, the final choice should be the culmination of, or the necessary sequel to, the ultimate practical judgement, which is the product of both capacities.⁸¹

Thus, what is necessary is not only the capacity to understand but also the ability to critically evaluate all of the subjective, objective and relevant variables so that the final conclusion is a synthesis of the objective value of these integrated variables.⁸² The struggle to provide a philosophical analysis of “the act of the will” has resulted in a dichotomization of the processes involved: comprehension, critical evaluation, volition. The analysis presents a descriptive model. Like all models it has limitations, is designed as a preliminary guide for more thorough investigations, is not necessarily inclusive of all relevant variables and does not necessarily totally construe objective reality. One of the main limitations of this philosophical model is that it isolates faculties and sequences the exercise of faculty powers. In so doing, it may risk the exclusion of highly relevant variables. In addition, the person acts

⁸⁰c. ANNÉ, 28 June 1965, in *SRR Dec.*, 57 (1965), p. 503. See also c. PINNA, 21 December 1959, *ibid.*, 51 (1959), p. 623.

⁸¹A. MENDONÇA, “Antisocial Personality and Nullity of Marriage,” in *SC*, 16 (1982), p. 90.

⁸²c. FELICI, 3 December 1957, in *SRR Dec.*, 49 (1957), p. 788. See also c. MASALA, 12 March 1975, *ibid.*, 67 (1975), pp. 133-135; KEATING, *The Bearing of Mental Impairment*, pp. 116-123.

as a unified organism wherein “the parts have no autonomous life.”⁸³ The unity of the organism is such that a deficit in one area of functioning may reverberate to other areas so that the entire process involved in the formation of a human will-act is disturbed.⁸⁴

The careful attempts by canonists to analyse “the act of the will” involved in marital consent reflects an awareness that this act must be proportionate to its object (marriage). Since marriage is an exclusive and permanent interpersonal relationship with the potential for responsible parenthood, canonists and jurists have fittingly stressed a proportionate psychological maturity for valid marital consent.⁸⁵

The formal juridical object of valid marital consent is “the intimate partnership of life and love” (GS, n. 48), the *consortium totius vitae* (c. 1055, §1), the irrevocable covenant (c. 1057, §2), the marriage itself (c. 1057, §2). The formal object in the 1983 Code represents a significant transformation of the corresponding canon in the 1917 Code.⁸⁶ Some of the

⁸³See L. ÖRSY, “Matrimonial Consent in the New Code: *Glossae* on Canons 1057, 1095-1103, 1107,” in *The Jurist*, 43 (1983), p. 38. See also IDEM, *Marriage In Canon Law*, p. 63; G.J. ROCHE, “Consent is a Union of Wills: A Study of the Bilateral Dimension of Matrimonial Consent,” in *SC*, 18 (1984), pp. 415-437.

⁸⁴c. MATTIOLI, 20 December 1962, in *SRR Dec.*, 54 (1962), pp. 706-725. See also M.B. AHERN, “Psychological Incapacity for Marriage,” in *SC*, 7 (1973), p. 229; A. MENDONÇA, “The Nature of Marital Consent,” *ibid.*, 16 (1982), p. 90.

⁸⁵See c. DI FELICE, 8 March 1975, in *SRR Dec.*, 67 (1975), pp. 86-87; c. FELICI, 3 December 1957, p. 788; c. MASALA, 10 May 1978, *ibid.*, 70 (1978), pp. 256-257; c. STANKIEWICZ, 5 April 1979, *ibid.*, 71 (1979), p. 169; R. GUIRY, “Immaturity, Maturity, and Christian Marriage,” in *SC*, 25 (1991), pp. 93-114; VERSALDI, “*Elementa psychologica matrimonialis consensus*”, pp. 179-209, 231-253.

⁸⁶Canon 1081, §2 stated that consent is the “actus voluntalis quo utraque pars tradit et acceptat ius in corpus, perpetuum et exclusivum, in ordine ad actus per se aptos ad proles generationem.” GS, n. 48 contains a more complex explanation: “Intima communitas vitae et amoris coniugalitatis [...] foedere coniugali seu irrevocabili consensu personali instauratur. Ita actu humano, quo coniuges sese mutuo tradunt atqueor accipiunt, institutum ordinatione

constitutive elements of the intimate partnership (the four *bona*, conjugal love and sacramentality) are discussed earlier in this chapter. However, the application of the law requires a jurisprudential investigation of the actual juridical meaning intended by the legislator for the *matrimonium in facto esse*. The *matrimonium in facto esse* is currently understood, in jurisprudence, as a complex of rights and obligations. Jurisprudence has and will continue to clarify this complex. Anné, for example, states that a community of life may be absent in a marriage “but the right to the community of life can never be absent.”⁸⁷

Several possible criteria may assist jurisprudential development in this area. One criterion, implicitly expressed as a caution, is given 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 generate) one would deny the rationality of human marriage.⁸⁸

The law itself states, in c. 1058, that: “All can contract marriage who are not prohibited by law.”

divina firmum oritur, etiam coram societate” (*AAS*, 58 [1966], p. 1067). See also A. STANKIEWICZ, “De causa iuridica foederis matrimonialis,” in *Periodica*, 73 (1984), pp. 203-234; BURKE, “The Object of the Marital Self-Gift,” p. 404.

⁸⁷c. ANNÉ, 25 February 1969, in *SRR Dec.*, 61 (1969), p. 183.

⁸⁸I. GRAMUNT and L.A. WAUCK, “Capacity and Incapacity to Contract Marriage,” in *SC*, 22 (1988), p. 153. See also c. HEARD, 27 April 1946, in *SRR Dec.*, 38 (1946), p. 263; c. MATTIOLI, 4 April 1966, in *ME*, 92 (1967), p. 433; c. AGUSTONI, 20 February 1979, *ibid.*, 104 (1979), pp. 302-314.

A second criterion can also be expressed as a caution. Mutual and total self-giving does not imply the loss of individual identity.⁸⁹ If an individual believes that marriage gives him/her the right and the obligation to change the other, he/she will probably engage in a type of control that is detrimental to the freedom necessary for the spiritual development of both parties and to the freedom necessary for a healthy interpersonal relationship. The unconditional gift of the conjugal self is meant to liberate the individual from selfishness and to provide, through the knowledge that the self is accepted as self, the secure atmosphere (not restricted) in which personal growth can occur. A third criterion could be an awareness “that the law has limits and can never embrace the total reality of human existence.”⁹⁰ Jurisprudential development, therefore, demands a certain openness to social changes and cultural differences. A fourth criterion encompasses faith in God and human faith in the other partner. As L. Örsy emphasizes, there must be some level of acceptance of God’s commitment to them because the “sacrament is brought into existence by the Spirit.”⁹¹ The capacity to have human faith in the other is also required because “I take you” infers “I believe in you.” This basic faith is possible only when it is free from ignorance (c. 1096), free from error (cc. 1097, 1099), free from *dolus* (c. 1098), free from invalidating conditions (c. 1102), free from force and fear (c. 1103), and free from inequality (cc. 1134, 1135). The

⁸⁹W. ERNST, “Marriage as Institution and the Contemporary Challenge to It,” in R. MALONE and J.R. CONNERY (eds.), *Contemporary Perspectives on Christian Marriage*, Chicago, IL, Loyola University Press, 1984, p. 71.

⁹⁰*Ibid.*

⁹¹ÖRSY, “Marital Consent in the New Code,” p. 39.

emphasis on the protection of rights in these canons and in canons 1095 and 1136 provides additional insights into the meaning of the formal object of marital consent.

The focus in this section has been on the act of consent, the object of consent and the content of the equal partnership. The next two sections will discuss two species of incapacity and the relationship between these species and the disorder of alcoholism in jurisprudence.

3.3 - Alcoholism and the lack of sufficient use of reason

An individual who lacks the minimum use of reason necessary to make a speculative judgement about the essential rights and obligations of marriage is prohibited by the nature of marriage consent itself from entering a valid marriage. Thus, canon 1095, 1° states: “[The following are incapable of contracting marriage]: 1° those who lack sufficient use of reason.”

This species of incapacity is grounded in Roman law which contains three principles for the “insanity test.”⁹² The first principle states that consent is necessary to contract marriage and that an insane individual is not capable of consent.⁹³ Paulus, the Roman jurist, states: “Insanity does not allow one to contract marriage because it requires consent.”⁹⁴ The second principle is that insanity, subsequent to the marriage contract, does not render null the contract. Again, Paulus writes: “Neither an insane man nor an insane woman can contract

⁹²See J.R. KEATING, “Marriage of the Psychopathic Personality,” in *Chicago Studies*, 3 (1964), pp. 21-23; IDEM, “The Legal Test of Marital Insanity,” in *SC*, 1 (1967), pp. 21-36.

⁹³“Furiosi [...] nulla voluntas est” (*Digest*, 50, 17, 40).

⁹⁴“Furor matrimonium contrahi non sinit. quia consensu opus est [...]” (*Digest*, 23, 2, 16).

marriage, but a marriage already contracted is not affected by insanity.⁹⁵ Third, Roman law specifies that an insane individual can, during a lucid interval, contract validly.⁹⁶ This is a generic principle that only applies to marriage by implication. Ecclesiastical law did not utilize these principles, in their entirety, for many years.

Ecclesiastical law, for some time, used the “wild beast” test; that is, only a clearly psychotic individual was sufficiently lacking in reasoning necessary for a valid marriage contract. Since this approach was not satisfactory, the Roman law principles began to have a greater impact. Robert of Flamesbury (before 1215), for example, believed that the *furiosi* were incapable of marriage because they were unable to exchange proper consent.⁹⁷ Bernard of Palma (1263), commenting on Pope Innocent III’s (1196-1216) decretal, *Dilectus*, felt that the insane could not enter a valid marriage but that the union would be valid if contracted during a lucid interval.⁹⁸ For Raymond of Pennafort, insanity was one of the twelve impediments. Validity was not affected if these impediments emerged after consent.⁹⁹ With *Dilectus* the ambiguous distinction between a real lucid interval and an apparent lucid interval

⁹⁵“Neque furiosus neque furiosa matrimonium contrahere possunt, sed contractum matrimonium furore non tollitur” (*Digest*, 5, 70, 6).

⁹⁶“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).

⁹⁷W. VAN OMMEREN, *Mental Illness Affecting Matrimonial Consent*, Washington, DC, Catholic University of America, 1961, p. 14.

⁹⁸*Ibid.*, p. 19.

⁹⁹*Ibid.*, pp. 19-20.

was introduced.¹⁰⁰ Further jurisprudential developments resulted in an awareness of the significance of the criterion of “due discretion” and with this the question of the minimum level of discretion necessary for validity was introduced.

By 1908 (*Sapienti consilio*) jurisprudence was greatly influenced by the “mortal sin” norm of Thomas Sanchez (1550-1610).¹⁰¹ The minimum norm for marriage was: if a person could posit a simple human act or could commit a mortal sin then he/she was considered capable of sufficient consent.¹⁰² Jurisprudence eventually went beyond Sanchez’ theory and adopted St. Thomas Aquinas’ view that more discretion was required for the valid exchange of consent than for engaging in mortal sin.¹⁰³ This development is reflected in a decision *coram* Prior in which we read:

Nor certainly can Sanchez’s teachings be approved (Lib. I. Disp. VIII, n. 15 [...]). The Doctors require a maturity of judgement for making a contract of marriage; indeed, St. Thomas required this for contracts of betrothals and, *a fortiori*, for the more serious and unbreakable contract of marriage. As he wrote in IV Dis. 27, qu. 2, art. 2 and 2: “To sin mortally it is sufficient to

¹⁰⁰See KEATING, *The Bearing of Mental Impairment*, pp. 73-76. In current jurisprudence, there is a presumption against lucid intervals in the presence of definitive evidence for insanity before and after consent. See R. BROWN, *Marriage Annulments in the Catholic Church: A Practical Guide*, Leigh-On-Sea, Essex, Kevin Mayhew Publishers, 1977, p. 45.

¹⁰¹T. SANCHEZ, *De sancto matrimonii sacramento*, Lib.I, Disp. 8, nn. 5, 15. See also R. BURKE, “Canonical Doctrine,” in SABLE, *Incapacity for Marriage*, pp. 100-103. Burke argues that Sanchez applied the “mortal sin norm” only to engagement and not to marriage. See also VAN OMMEREN, *Mental Illness*, p. 37.

¹⁰²KEATING, *The Bearing of Mental Impairment*, p. 110. See also c. MANY, 11 August 1913, in *SRR Dec.*, 5 (1913), p. 564.

¹⁰³ST. THOMAS AQUINAS, *Summa theologiae, Supplementum*, q. LVIII, a. 5.

consent for the present; but a consent to betrothal involves the future rather than consenting to one present act".¹⁰⁴

P. Mattioli used the word *amentia* in an attempt to clarify insufficient use of reason. He stated:

"The word 'amentia' in itself does not indicate or necessarily signify a sickness, but rather a 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."¹⁰⁵

Pinto further specifies categories of individuals who lack sufficient of reason:

- 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, are impeded by an actual disturbance of the mind.

We are dealing, therefore, with cases in which the contracting party is incapable of eliciting a human act.¹⁰⁶

Pinto's insightful comments may have significance for the application of this species of incapacity to marriage cases. The distinction between "quantitative," "qualitative" and "habitual" evidence for the inability to posit a human act is meaningful. A standardized

¹⁰⁴c. PRIOR, 14 November 1929, in *SRR Dec.*, 11 (1919), p. 174.

¹⁰⁵c. MATTIOLI, 6 November 1956, *ibid.*, 48 (1956), p. 873. English translation in F.G. MORRISEY, "The Incapacity of Entering into Marriage," in *SC*, 8 (1974), p. 14.

¹⁰⁶c. PINTO, 4 February 1974, in *SRR Dec.*, 66 (1974), pp. 36-37. English translation from A. MENDONÇA, "The Incapacity to Contract Marriage: Canon 1095," in *SC*, 19 (1985), pp. 265-266.

reliable measure of reasoning could reveal quantitative evidence of a level of development incompatible with the capacity to elicit a human act. Such a deficit could exist in the absence of any other identifiable disorder. In the qualitative category, the type of reasoning (regardless of cause) is consistently so illogical that a human act is not possible. The third category admits that a transitory disturbance can be of such severity that sufficient use of reason is temporarily suspended (e.g. acute alcohol intoxication). Pinto implies that, in all three categories, the deliberation proportionate to a reasoned and, therefore, human act of consent is not present. According to Keating, the criteria for proof in such cases of insufficient use of reason, developed by Rotal jurisprudence, include the following:

- 1) *Amentia concomitans*. Mental defect or disorder must be proved to have existed concomitantly with the expression of consent.
- 2) *Amentia matrimonialis*. It must be proved to have affected the specific sphere of psychic activity which produces marital consent.
- 3) *Amentia perfecta seu plena*. It must be proved to have been of such gravity as to effectively deprive one of the minimum degree of discretion required for placing sufficient consent.¹⁰⁷

Amentia in the above quotation, is at least implicitly associated with a mental defect or disorder.

As stated above, Mattioli attempted to free this species of incapacity from any necessary association with mental illness. This attempt has not been entirely successful. Schizophrenia (a known brain illness) is, for example, frequently presented as an illness that invalidates consent under this ground.¹⁰⁸ However, the phrase "the use of reason" itself denotes only the

¹⁰⁷KEATING, *The Bearing of Mental Impairment*, p. 63.

¹⁰⁸See E.M. EGAN, "The Nullity of Marriage for Reason of Insanity or Lack of Due Discretion of Judgement," in *Ephemerides iuris canonici* [=EIC], 39 (1983), p. 45; GRAMUNT and WAUCK, "Capacity and Incapacity to Contract Marriage," p. 163; F.G. MORRISEY, "Proposed Legislation on Defective Matrimonial Consent," *CLSA Proceedings*,

capacity to interpret accurately abstracted sensory input (internal and external) in such a manner that the input becomes integrated and stored information becomes available for reality-based thinking. The value of this species of incapacity is that it speaks to this process of forming and the ability to form an intention¹⁰⁹ and the requirement of rational thought¹¹⁰ in order to posit the human act of consent. It does not focus on the cause of the deficit in reasoning and it does not state that only permanent deficits can result in decisions for nullity. It is, therefore, reasonable to conclude that if insufficient reasoning power exists at the time of consent a decision for nullity is justified.¹¹¹ No doubt jurisprudence, with assistance from the behavioural sciences, will continue to clarify the uniqueness of this distinct species of incapacity. Can “lack of sufficient use of reasoning” be a ground when alcoholism is the identified difficulty in a marriage case?

3.3.1 - Rotal jurisprudence

Prior to Sabattani’s 1961 decision,¹¹² Rotal judges adjudicated cases involving alcoholism by conceptualizing intoxication as a transient psychic disorder. The juridic element recognized in a psychic disorder or “insanity” or “amentia” was “lack of reason” or incapacity to elicit a human act. This procedure, therefore enabled judges to examine such

¹⁰⁹U. NAVARRETE, “Problemi sull’autonomia dei capi di nullità del matrimonio per difetto di consenso causato da perturbazioni della personalità,” in *Quaedam problemata actualia de matrimonio*, ed. 3a, Romae, Pontificia Universitas Gregoriana, 1979, p. 263.

¹¹⁰See ÖRSY, *Marriage and Canon Law*, p. 130.

¹¹¹_____, “Matrimonial Consent in the New Code,” p. 64.

¹¹²c. SABATTANI, 24 February 1961, in *SRR Dec.*, 53 (1961), pp. 116-132.

cases on the ground of “lack of reason.” The basic juridic principles concerning “insanity” were implicitly contained cc. 88 and 1982 (*CIC/1917*).¹¹³

3.3.1.1 - Decision *coram* QUATTROCOLO, 25 April 1933

“Lack of reason,” because of inebriety, was used as one ground in this case. It received a negative decision because the court did not find sufficient evidence for the complete lack of the use of reason. The Tribunal stated:

One who, for the declaration of the nullity of marriage, alleges that he had consented to the marriage while in the state of drunkenness which deprived him of the “use of reason”, or because of fear by which he was compelled to accede to the celebration of the wedding, has the presumption against him, because marriage enjoys the favour of law. Therefore, it is up to him to present stronger proof. Hence, there is no reason to consider contrary exceptions, when they are not so strong and efficacious as to prove convincingly the alleged nullity arising either from fear, or from defect of consent, or from any other cause.¹¹⁴

3.3.1.2 - Decision *coram* QUATTROCOLO, 16 April 1935

“Use of reason” was used as a ground in the examination of another case that originated in Trois Rivières. In this case, the Petitioner claimed that he was intoxicated at the time of the marriage and, therefore, lacking in the level of consciousness necessary for the valid exchange of consent. The case received a negative decision at first instance and an

¹¹³c. WYNEN, 21 December 1937, *ibid.*, 29 (1937), p. 757. See also KEATING, *The Bearing of Mental Impairment*, pp. 5-6.

¹¹⁴c. QUATTROCOLO, 25 April 1933, in *SRR Dec.*, 25 (1933), p. 265: “Qui ad nuptias irritandas ebrietatem, usum auferentem rationis, vel metum, quo compulsus ad matrimonii celebrationem accessit, allegat, contra se habet praesumptionem, attento favore iuris quo matrimonium gaudet; onus propterea ei incumbit fortioris probationis. Quare nulla ratio est habenda de oppositis exceptionibus, quando non sunt adeo perstringentes et efficaces, ut invicte evincant adsertam nullitatem sive ex metu, sive ex defectu consensus, sive ex alia causa irritanti promanantem.”

affirmative at second instance. The Rota agreed with the court of first instance and provided the following statement:

Therefore it is clear that those who marry should be *iure habiles* to contract marriage, so that they do not suffer from the defect of discretion or ignorance nor defect of reason. They should be endowed with such discretion, that is, maturity of judgement proportionate to the contract, as to understand sufficiently the nature and essential properties of marriage. Therefore, those who suffer from habitual and complete insanity and simplemindedness, or are in actual state of drunkenness which does not permit a true consent during the celebration of the marriage, in so far as it actually impedes that deliberation of judgement which is required to understand this contract, and to weigh its rights and obligations, cannot elicit valid consent.¹¹⁵

The Rota based its negative decision on the fact that there was no actual evidence of acute intoxication, inebriety or lack of rational thought at the time that consent was exchanged. Evidence did not dispel the presumption in favour of the validity of the bond.

3.3.1.3 - Decision *coram* FUNGHINI, 18 December 1991

The marriage under investigation was celebrated, in this case, on 15 July 1976 and lasted less than two years. The petitioner (husband) requested a declaration of nullity from the tribunal of Milan on 8 February 1988. The issues were joined on the basis of c. 1095, 1° and 2° and on the intention *contra bonum sacramenti* (c. 1086, §2 of *CIC/1917*). A negative

¹¹⁵c. QUATTROCOLO, 16 April 1935, in *SRR Dec.*, 27 (1935), p. 254: "Planum propterea est, quod ad matrimonialem ineundum contractum iure habiles nupturientes esse debent, ita ut neque discretionis defectu aut ignorantia laborent, neque defectu usus rationis. Ea nempe discretionem seu maturitatem iudicii pollere ipsi debent, quae sit contractui proportionata, ad sufficienter intelligendum quid sit matrimonium et eiusdem essentialia proprietates. Ideo a matrimonio contrahendo arcentur qui versantur in habituali plenaque amentia et fatuitate, vel in actuali eo statu ebrietatis, qui verum consensum in ipsa matrimonii celebratione non permittit, quatenus actualiter impedit illam discussionem iudicii, quae requiritur ad hunc contractum intelligendum, et ad eiusdem iura et obligationes considerandas."

decision was given on all three grounds on 30 November 1989 at first instance. The petitioner appealed to the Roman Rota and after submitting the case to ordinary examination, the judges pronounced a negative decision.¹¹⁶

Funghini combines 1° and 2° of c. 1095 in the *in iure* and in the *in facto* sections and presents separate *in iure* and *in facto* explanations for the intention *contra bonum sacramenti*. Since the petitioner's principal claim was incapacity due to drunkenness at the time of consent, the *ponens* focuses on whether or not there is proof of the removal of rational thought at the time of consent. He presents some useful criteria that can facilitate the transition from recorded facts to a decision. First, the degree of intoxication must be assessed by examining the effects of alcohol as manifested through external symptoms and thus a judgement can be made about the extent to which the functioning of the intellect and will is impaired.¹¹⁷ Second, since tolerance for alcohol varies from individual to individual, the quantity and quality of alcohol consumed are not necessarily accurate measures of acute intoxication.¹¹⁸ Third, complete drunkenness is not required for a declaration of nullity. It must be determined, however, "whether ... the requisite deliberation was completely lacking or whether sufficient light of intellect and power of will remained ...".¹¹⁹ Fourth, the details and circumstances of the drinking episode itself and the time that lapsed between the

¹¹⁶c. FUNGHINI, 18 December 1991, in *SRR Dec.*, 83 (1991), p. 805.

¹¹⁷*Ibid.*, p. 792.

¹¹⁸*Ibid.*

¹¹⁹*Ibid.*: "... utrum ... tota defecerit deliberatio debita, an remanserit sufficiens lumen intellectus visque voluntatis ..."

consumption of alcohol and marital consent ought to be examined as clues to the degree of intoxication.¹²⁰ Fifth, a severe degree of intoxication at the time of exchanging consent invalidates the consent and this is so “even if prior to the time of the marriage ceremony, he himself made the arrangements with respect to the place and the ceremony.”¹²¹ The intention to marry, formed in a state of sobriety, does not therefore suffice if drunkenness exists at the time of consent.

The obvious interest in this sentence, is the extent to which rational thought is impeded at the time of consent irrespective of pre and post consent behaviours. If rational thought (sufficient use of reason) is seriously impeded, sufficient discretionary judgement is an impossibility. In this case, a detailed study of the recorded facts and an application of the above criteria did not reveal definitive proof of the removal of rational thought. What must be determined is the “degree of intoxication”¹²² of the party and whether or not this condition is incompatible with the use of reason sufficient for the positing of a human act. Degree of intoxication can also be determined by comparing recorded observations with integrated information from Sabattani’s¹²³ definition of acute alcoholism, Keller’s description of alcohol

¹²⁰Ibid.

¹²¹Ibid., p. 791: “... etsi in antecedenter nuptiarum tempus, locum et caeremoniam ipse statuerit ...”

¹²²c. BRUNO, 18 December 1986, in *SRR Dec.*, 78(1986), pp. 755-764.

¹²³c. SABATTANI, 24 February 1961, p. 118.

intoxication,¹²⁴ the *DSM-IV* criteria for alcohol intoxication¹²⁵ and BAC information (if available). Although “ecclesiastical law does not directly adhere to the criterion of psychiatric diagnoses,”¹²⁶ and a judicial evaluation must intervene, an individual’s capacity to function (engage in a human act with sufficient use of reason) may be inferred from recorded observations.

The petitioner’s advocate was not in agreement with Funghini’s sentence confirming the first instance decision. He submitted additional documents and requested that a new hearing be granted. The *turnus* granted this request and decreed, on 24 February 1993, in the affirmative on the issue.¹²⁷ The results of this new hearing are discussed in the following section.

3.3.1.4 - Decision *coram* FALTIN, 14 December 1994

The petitioner’s advocate submitted an expert’s opinion with his request for a new hearing. The reason for the new hearing was, at least partially, grounded in the fact that

¹²⁴See Chapter One, note 18.

¹²⁵See *ibid.*, note 25.

¹²⁶c. STANKIEWICZ, 23 February 1990, in *ME*, 116 (1991), p. 330: “... lex ecclesialis criterium nosographiae psychiatricae directe non adhibeat, ...”.

¹²⁷c. FALTIN, 14 December 1994, in *SRR Dec.*, 88 (1994), p. 674: “Viri actoris assiduus Patronus non adquevit, sed appellans ad Turnum sequentem, cui exhibuit nova documenta, petiit ut beneficium novae audientiae concederetur. Exinde, Turnus rotalis, omnibus perpensis, quaestioni praeiudiciali, nempe: «An nova causae propositio admittenda sit, in casu », suo decreto, diei 24 februarii 1993, respondit: « Affirmative, seu novam causae propositionem admittendam esse, in casu ».”

expert opinion had not been obtained at second instance.¹²⁸ The petitioner's advocate also asked for supplementary instruction. This was completed by reinterviewing the petitioner, by obtaining the depositions of two witnesses and by receiving a report from a court-appointed expert (new extrinsic proofs).

In the *in iure* section, Faltin states that Thomistic teaching, papal allocutions and jurisprudence all affirm that a human act is necessary for valid marital consent in the order of creation and in the order of salvation. The human act of marital consent involves sufficient knowledge, deliberation and internal freedom. The individual must be subjectively capable

¹²⁸Ibid., pp. 674, 675. Since cases concerning the status of persons never become *res iudicata* (c. 1643), a new hearing is always possible provided "new and serious proofs or arguments are brought forward" (c. 1644). MENDONÇA distinguishes between a new examination of a case and *restitutio in integrum* (A. MENDONÇA, "Recent Trends in Rotal Jurisprudence," in *SC*, 28 [1994], p. 224). The purpose of a new hearing is the search, in justice, for the objective truth and the objective of *restitutio in integrum* is to remedy an injustice. Whether or not *restitutio in integrum* applies in this case *c. FALTIN* could be disputed. According to Mendonça, the justification for a new examination is based on extrinsic means of proof (depositions of the parties, testimonies of witnesses, reports from experts, documents) and intrinsic arguments (violations of procedural laws and laws that protect the rights of the parties) (p. 225). In this case *c. FALTIN*, a new hearing is justified by the neglect of the prescriptions of not – merely – procedural laws (cc. 1530 and 1452). A more comprehensive discussion of the reasons for a new examination of a case after two conforming decisions can be found in the following sources: J.G. JOHNSON, "Making Restitution in Marriage Cases: Can It Be Done?" in *The Jurist*, 51 (1991), pp. 155-182; *c. FALTIN*, 16 December 1992, in *ME*, 118 (1993), pp. 209-231; IDEM, 27 April 1990, in *DE*, 102/2 (1991), pp. 31-53; *c. DAVINO*, 21 July 1988, in *ME*, 115 (1990), pp. 316-330; *c. BURKE*, 22 July 1991, in *Forum*, 4 (1993)1, p. 108, 109.

of an act that is proportionate to the objective rights and obligations of marriage.¹²⁹ The law does not state that the capacity to verbalize consent proves efficacious consent.¹³⁰

Faltin moves from a discussion of applicable laws and their implicit meanings to behavioral science information on alcoholism by stating that an accurate integration of the two, in the canonico-juridic order, can be achieved only when attention is focused on the principles of jurisprudence and Christian anthropology. Also, according to Faltin, it is necessary to distinguish between c. 1095, 1° and 2° in the canonico-juridic order because, in traditional jurisprudence, habitual *dementia* resulting in a lack of use of reason invalidated consent.¹³¹ On the other hand, current jurisprudence focuses on the degree of interference to intellectual and volitive functioning¹³² as the juridically significant element.

¹²⁹c. FALTIN, 14 December 1994, pp. 675, 676.

¹³⁰*Ibid.*, p. 676.

¹³¹It can be noted that Funghini (section 3.3.1.3 above) combined 1° and 2° of c. 1095 in his *in iure* section. Faltin, therefore, provides another reason for his disagreement with Funghini's conclusion.

¹³²c. FALTIN, 14 December 1994, p. 677: "Capacitatis intelligendi et volendi laesio « comunque si voglia definire » (cf. Ioannes Paulus PP. II, *Allocutio ad Rotam Romanam*, die 5 februarii 1987, in *AAS*, vol. LXXIX, p. 1457, n. 7), « depromitur non ex morbo mentis, sed ex laesa voluntate seu facultate volitiva, quae laesio praepedit libertatem electionis » (coram Fiore, decisio diei 31 martii 1979, n. 4)."

Following a discussion of the different stages of acute alcoholism,¹³³ Faltin also refers to pharmacological information on the interactive effects of barbiturates and alcohol and Jellinek's *prodromal* phase.¹³⁴ After stating that expert opinion was necessary in this case, the *ponens* completes the *in iure* section with a differentiation of the roles of the judge and expert.

The *in facto* section contains an analysis of the grounds for the case, a listing of the weaknesses in the second instance sentence, a response to the issues raised by the defender of the bond, a defense of the credibility of the depositions of the petitioner and witnesses, an analysis of the facts of the case, and an evaluation of the conclusions of the experts.

The judges confirmed the second instance negative Rotal decision on the intention *contra bonum sacramenti* because of a lack of substantial evidence in the *Acta* and because a proximate cause for simulation was not reported. In addition, the judges agreed that a lack of sufficient use of reason could not be demonstrated because the petitioner did not suffer from habitual insanity. However, the present *turnus* took exception to the second instance's negative decision grounded in c. 1095, 2^o.¹³⁵

¹³³Faltin, like most authors admits that individuals differ, psychologically and physically, in their tolerance for alcohol. He equates amounts consumed with the different stages of acute alcoholism. His statistical data are comparable to information on the BAC (Chapter One). Since chronic alcoholism is not an issue in this case, it is only referred to in passing.

¹³⁴The petitioner consumed a large quantity of alcohol together with "optalidon" (a barbiturate) on the day of the wedding. There is a high probability that he was in an amnesic state characteristic of Jellinek's *prodromal phase* at the time of marriage consent.

¹³⁵c. FALTIN, 14 December 1994, pp. 681-682.

The second instance sentence reveals certain weaknesses. These weaknesses are: the ascription of undue credibility to the respondent, the failure to grant sufficient credibility to the petitioner, the lack of analyses by the judges of the facts and the petitioner's condition at the time of consent, and a neglect of the prescriptions of the law (an expert was not appointed). These weaknesses, according to the *ponens*, can account for the negative decision on c. 1095, 2° at second instance.¹³⁶ When these procedural defects were removed in the new hearing, *coram* Faltin, it was obvious that the abuse of alcohol together with the use of optalidon rendered the petitioner's volitive faculty inefficacious.¹³⁷

For the judges, the most relevant question in this case was: "What effects can the use of optalidon in notable doses and in combination with alcohol have on a subject?"¹³⁸ The experts agreed that the effects of optalidon can, without alcohol, persist for more than eight hours. When taken with alcohol, it prolongs the state of drunkenness.

In this case, expert opinion had a significant impact on the final decision. The judges successfully integrated the law, the facts of the case and expert opinion. They gave an

¹³⁶Ibid., pp. 682, 683.

¹³⁷Ibid., p. 681: "Cum in casu, de quo hinc agitur capacitatis intelligendi et volendi laesio depromenda non est ex morbo mentis ob dementiam aut amentiam habitualement, uti pronum est, sed ex laesa voluntate seu facultate volitiva ob ebrietatem plenam ex abusu substantiarum alcoholicarum una cum usu pharmaci v. d. « optalidon », videndum est in quonam statu actor, effective et non praesumptive, in actu matrimonii inveniebatur."

¹³⁸Ibid., p. 684: "Quali effetti può avere l'uso di optalidon in dose notevole assunto in combinazione con alcoolici?"

affirmative decision on the basis of c. 1095, 2°. A second, unpublished decision, was given on 24 April, 1996.¹³⁹

This sentence challenges a previous Rotal decision by shifting the primary focus from c. 1095, 1° to c. 1095, 2°. The sentence has jurisprudential significance, however, for other reasons. First, it stresses the importance of the advocate's role in the delivery of justice. Second, it insists on a distinction between c. 1095, 1° and 2° in the canonico-juridic order and on the accurate joining of issues. Third, it claims that expert opinion can be necessary even when the ground for adjudication is c. 1095, 2°. Fourth, it demonstrates how the integration of law, observed facts and expert opinion can facilitate the decision-making process. Fifth, it does not insist that diagnosed psychopathology, in the strict sense, must exist for a declaration of nullity under c. 1095, 2°.

3.3.2 - Summary and discussion

During the era following the promulgation of the 1917 Code, there were several other negative Rotal decisions where alcoholism was involved.¹⁴⁰ It is probable that these decisions were at least partially grounded in the belief that evidence of a complete lack of reason (similar to the evidence found in cases of insanity) would be necessary to overturn the presumption of validity. This stringency does not appear to be required by c. 1095, 1° of the 1983 Code. The present legislation requires "sufficient" use of reason, that is, reason

¹³⁹*Ibid.*, p. 686.

¹⁴⁰c. MANNUCCI, 28 January 1929, in *SRR Dec.*, 21 (1929), pp. 59-64; c. FLORCZAK, 31 January 1929, *ibid.*, pp. 75-84; c. JULLIEN, 11 December 1937, *ibid.*, 29 (1937), pp. 734-740.

proportionate to the formal object of marriage. In an individual case, there could be evidence of sufficient use of reason for matters other than marriage and evidence of insufficient use of reason for marriage.¹⁴¹ In any event, c. 1095 1° is not used, with any frequency, in the adjudication of marriage cases. Judges have a preference for the other two species of incapacity. This preference may reflect the fact that, by comparison, there is a substantial amount of jurisprudence already developed for the latter two incapacities or because some canonists believe that “lack of sufficient use of reason” is superfluous in light of and preempted by the norm of “lack of discretion of judgement.”¹⁴²

It has been argued that the difference between c. 1095's first two *capita* is quantitative rather than qualitative and that “the ‘lack of sufficient use of reason’ presupposes an extreme mental condition which may not be present in most cases alleged to involve the incapacity to elicit the act of matrimonial consent.”¹⁴³ This analysis may imply that the incapacity to reason (a distinct variable), as an “extreme mental condition,” is less complex and more amenable to quantitative measurement than discretionary judgement.¹⁴⁴ Although incapacity to reason may

¹⁴¹ ÖRSY, “Matrimonial Consent in the New Code,” p. 42.

¹⁴² MENDONÇA, “Consensual Incapacity for Marriage,” p. 492.

¹⁴³ MENDONÇA, “Incapacity to Contract Marriage,” pp. 274-275. See also IDEM, “Consensual Incapacity for Marriage,” p. 505; R. BURKE, “Canon 1095: Canonical Doctrine and Jurisprudence, Part I: Canon 1095, 1° and 2°,” in *CLSA Proceedings*, 48 (1986), p. 100; A. STANKIEWICZ, “L’incapacità psichica nel matrimonio: terminologia, criteri,” in *Apollinaris*, 53 (1980), p. 67.

¹⁴⁴ ÖRSY points out that “judgement 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 judgement” (“Matrimonial Consent in the New Code,” p. 42).

be a by-product of a variety of complex disorders (e.g. neurological disorders), it may also manifest itself as a distinct entity (e.g. mental retardation) in the absence of other identifiable abnormalities. When such is the case, c. 1095 1° may be the most appropriate *caput*. If an individual measures well below average on a standardized test of reasoning and if this measure correlates with observed behaviours and functional capacity, his/her case could be adjudicated on the basis of c. 1095, 1°. ¹⁴⁵ It is possible that the legislator included c. 1095, 1° as a *caput* distinct from c. 1095, 2° in the 1983 Code to ensure recognition that a grave lack of discretionary judgement can exist as an incapacity to utilize reason sufficiently present and quantitatively measurable. In concrete cases, the dividing lines between the three species of incapacity cannot be always clearly drawn because within a functioning person they are often interrelated. However, Stankiewicz claims that “sufficient use of reason” is a legitimate ground in cases “of acute intoxication” to the extent that “a human act” is “impeded.” ¹⁴⁶ Likewise, Burke states: “It is evident that a state of drunkenness takes away the use of reason even in persons who are otherwise normal; therefore it induces an incapacity for giving valid consent under c. 1095, 1°.” ¹⁴⁷

The ground of “insufficient use of reason” may be the more parsimonious approach especially if there is clear evidence of severe and acute intoxication at the time of consent and if there is little information about a pre-consent behavioural pattern that would justify joining

¹⁴⁵See E. Kneal, “The Mentally Impaired: Can They Marry? May They Marry?,” in *CLSA Proceedings* 58 (1996), pp. 219-236. There are a number of standardized tests of intelligence (e.g., *WAIS-III*) containing subtests that measure reasoning capacity. In these tests, reasoning is operationally defined as that which the test measures.

¹⁴⁶c. STANKIEWICZ, 23 February 1990, in *ME*, 116 (1991), p. 305.

¹⁴⁷c. BURKE, 2 December 1993, in *SC*, 29 (1995), p. 510.

the issue on lack of discretionary judgement. Unlike the first species of incapacity in c. 1095, the second species is frequently used as a *caput* in marriage cases involving alcoholism.

3.4 - Alcoholism and lack of discretionary judgement

Sufficient discretionary judgement for valid consent implies the capacity to know, to evaluate and to choose with an accuracy that is proportionate to the object of consent itself. Canon 1095, 2° states: “[The following are incapable of contracting marriage]: those who suffer from a grave lack of discretionary judgement concerning the essential matrimonial rights and obligations to be mutually given and accepted.”

As early as 1919, Rotal judge Prior introduced the concept of discretion of judgement. He claimed that marital consent (a “qualified human act”) requires “discretion of judgement or of freedom” proportionate to the obligations or, in other words, more than the simple use of reason.¹⁴⁸ Since Prior’s decision, Rotal jurisprudence has progressively refined the concept of lack of discretionary judgement.¹⁴⁹ This refinement has resulted in the identification of the psychic components of discretion of judgement as originally contained in St. Thomas’ writings¹⁵⁰ and as summarized by Pompedda:

- 1) sufficient *cognitive* knowledge: of the object and of the subject;

¹⁴⁸c. PRIOR, 14 November 1919, in *SRR Dec.*, 11 (1919), p. 174. See also J.R. KEATING, “The *caput nullitatis* in Insanity Cases,” in *The Jurist*, 22 (1962), p. 397.

¹⁴⁹c. WYNEN, 25 February 1941, pp. 144-168. See also c. DI FELICI, 11 December 1975, in *SRR Dec.*, 67(1975) pp. 714-723; C. LEFEBVRE, “De defectu discretionis iudicii in rotali iurisprudencia,” in *Periodica*, 69 (1980), p. 559; c. SABATTANI, 24 February 1961, p. 118; c. MATTIOLI, 20 December 1962, p. 711; c. ANNÉ, 26 January 1971, in *SRR Dec.*, 63 (1971), p. 67; EGAN “The Nullity of Marriage for Reason of Insanity or Lack of Due Discretion of Judgement,” p. 20.

¹⁵⁰*Summa theologiae, Supplementum*, q. XLIII, a 1; also.. q. LVII, a. 5. See also KEATING, *The Bearing of Mental Impairment*, pp. 166-168.

- 2) sufficient *critical evaluation*: of the object, of the motives and of the subject in relation to the contract;
- 3) sufficient *internal freedom*: either to evaluate the motives, that is to deliberate, or to control impulses or internal limitations.¹⁵¹

Pompedda first emphasizes the requirement of sufficient knowledge. That is, sufficient cognitive knowledge of the self, the other and the four *bona* (the *consortium totius vitae*) that will allow for an accurate evaluation and choice. In addition, this knowledge, in order for it to attain canonical maturity, must be evaluated. The contractant must have the capacity to assess, compare and integrate stored knowledge and judgements in order to arrive at a mature judgement proportionate to valid consent. The very concept of judgement necessarily entails, therefore, the requirements of both the content of knowledge (c. 1096, §1)¹⁵² and the process.¹⁵³

In order for a contractant to utilize and to process adequately sufficient knowledge in the service of the human act of consent, his/her will must be free from internal and external debilitating forces. As Faltin explains, individuals not only have the right to be free from

¹⁵¹M.F. POMPEDDA, "Maturità psichica e matrimonio nei canoni 1095, 1096," in *Apollinaris*, 57 (1984), p. 134. See also c. FIORE, 30 May 1987, in ALESSANDRO, *Marriage Studies*, p. 17; R. BROWN, "Inadequate Consent or Lack of Commitment: Authentic Grounds for Nullity?" in *SC*, 9 (1975), p. 263; c. DAVINO, 20 February 1992, in *ME*, 118 (1993), p. 186; BURKE, "Canon 1095, 1° and 2°," pp. 117-118; c. DAVINO, 28 April 1983, in *SRR Dec.*, 75 (1983), p. 198.

¹⁵²c. BOCCAFOLA, 27 February 1992, in *IE*, 5 (1993), p. 213.

¹⁵³I. GRAMUNT and L.A. WAUCK, "Lack of Due Discretion: Incapacity or Error?" in *Ius canonicum [=IC]*, 32 (1992), p. 537. See also c. SABATTANI, 24 February 1961, p. 118; E. COLAGIOVANNI, "Lack of Discretion of Judgment and Incapacity to Assume the Essential Obligations of Marriage: Canonical Jurisprudence and Interpretation," in *Forum* 1 (1990)1, p. 73.

coercion in choosing any state in life (cc. 219, 642, 721, §3, 1031, §1) but they must be free for the validity of the choices.¹⁵⁴

Given the necessary elements of sufficient abstract or speculative knowledge, critical knowledge and freedom, is there a criterion that can be used to determine whether or not discretionary judgement is actually present? Since the law itself does not provide a measure, Sabattani suggests a “dynamic criterion” or a judicial investigation of the processes by which the act of consent is formed. The judge must identify the forces impinging on the psychic faculties, assess their effects on the freedom of these faculties to operate and finally assess the proportionality of the decision. He makes the following suggestion:

I thus propose that the “dynamic criterion” be adopted in the place of static criterion. That means: I do not know if this particular consent has the sufficient and necessary weight to be valid; I do not have the unit of measure, I can, however, try to see how this consent was produced, what its components were, if in the “assembly line” there was a faulty manoeuvre, an inadmissible omission. Thus, without knowing its objective weight, I can declare that this product is not legitimate because the forces which produced it (dynamic criterion) were not the normal ones.¹⁵⁵

At least two Rotal judges provide conceptual frameworks with which Sabattani’s “dynamic criterion” can be applied. They suggest that the process involved in the formation of an act of consent presupposes intrapersonal and interpersonal integration. Serrano writes:

¹⁵⁴C. FALTIN, 11 November 1988, in P.A. BONNET and C. GULLO. (eds.), *L’immaturità psico-affettiva nella giurisprudenza della Rota Romana*, Città del Vaticano. Libreria editrice Vaticana, 1990, p. 169.

¹⁵⁵A. SABATTANI, “L’évolution de la jurisprudence dans les causes de nullité de mariage pour incapacité psychique,” in *SC*, 1 (1967) p. 150.

From a close study of the very constitution of consent, we must conclude that matrimonial consent is readily possible, according to the law of nature and divine disposition, for every person who enjoys the faculty to deliberate and to decide and who is not legitimately prevented on some other ground. And consent “in itself” involves a process which is difficult and complex, a process produced by several weighty powers of the human spirit, for example, the use of reason, the free play of the will, strong affective and emotional drives, all of which can seriously influence the consent in one direction or another.¹⁵⁶

Anné’s comments on the requirements of the consent process are as follows:

Married life, that is, the state of marriage, principally consists in an interpersonal exchange which has a healthy interpersonal orientation in each person as its foundation. It follows that if the life history of the person marrying, according to the opinion of experts, clearly indicates that the person even before marriage had been seriously deficient in intrapersonal and interpersonal integration, that person must be considered incapable of understanding correctly the distinctive character of the communion of life [...] and consequently, incapable likewise of making a correct reasoned judgement about establishing that permanent communion of life with another person.¹⁵⁷

Sabattani and other judges and canonists do not insist that blatant psychopathology must be present for the determination that there is an absence of sufficient discretionary judgement.¹⁵⁸ In some cases, social-cultural influences and cultural attitudes have been adopted and internalized that are contrary to the Church’s teaching on marriage.¹⁵⁹ These

¹⁵⁶c. SERRANO, 5 April 1973, in *SRR Dec.*, 65 (1973), p. 330. English Translation adapted from *CLD*, 8 (1973-1977), p. 705. See also ÖRSY, “Matrimonial Consent in the New Code,” p. 42.

¹⁵⁷c. ANNÉ, 22 July 1969, in *SRR Dec.*, 61 (1969), p. 865. English translation adapted from *CLD*, 8 (1973-1977), pp. 681-682.

¹⁵⁸F. G. MORRISEY, “The Incapacity of Entering into Marriage,” in *SC*, 8 (1974), p. 17.

¹⁵⁹c. DAVINO, 20 March 1985, in *SRR Dec.*, 77 (1985), pp. 180-188.

influences and attitudes form the foundation from which the intellect and will operate in their decision-making and choosing capacities. In these cases the degree of defectiveness is defined in terms of differences in and incompatibility between attitudes and beliefs and the requirements of law rather than in terms of abnormality. Nevertheless, in the vast majority of cases, the individual's maturity of judgement will be determined to be seriously impeded on the basis of chronic (congenital or acquired) or transitory disorders.

Habitual impairment may be judged to be present if a psychosis, neurosis or personality disorder has been identified.¹⁶⁰ If an individual is diagnosed as psychotic, he/she is usually considered to be incapable of evaluating the object as well as the subject of consent. A. Mendonça states that a legal presumption has been established concerning cases involving psychoses: "When a person is proven 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 judgement proportionate to marital obligations."¹⁶¹ When a neurotic disorder is present, jurisprudence usually determines that the will is adversely affected and, therefore, the internal freedom available to the individual to make a free and realistic choice is disproportionate to the freedom necessary for marital consent.¹⁶² With regard to the effects

¹⁶⁰GRAMUNT and WAUCK, "Capacity and Incapacity to Contract Marriage," p. 164. See also R. KENYON, "The Nature and Nullity of Matrimonial Consent: Arguments Based upon Primary Sources," in *SC*, 14 (1980), p. 117.

¹⁶¹MENDONÇA, "Incapacity to Contract Marriage," p. 276. See also c. SABATTANI, 4 March 1961, in *SRR Dec.*, 53 (1961), p. 160; c. JULLIEN, 16 December 1943, *ibid.*, 35 (1943), p. 949.

¹⁶²c. STANKIEWICZ, 18 December 1986, *ibid.*, 78 (1986), p. 747. See also c. ANNÉ, 26 January 1971, p. 67; c. DE JORIO, 19 December 1961, *ibid.*, 53 (1961), p. 613; M.F.

of personality disorders on marital consent, some authors locate the interference in functions assigned to the intellect and others in functions attributed to the will.¹⁶³ Individual differences are such that both emphases are logically justifiable. However, Lefebvre warns that the emphasis must be on the functioning capacity of the indivisible human person. He writes: "First of all intellect and will cannot be separated, and much less can the defect of knowledge and of freedom, that is, of the will, be separately defined. Therefore, it cannot be determined a priori when the judge should examine someone's intellective capacity alone, and when he or she should investigate the volitive capacity."¹⁶⁴

Serious transitory disorders (e.g., acute alcoholism), can also vitiate sufficient discretionary judgement. In order to arrive at moral certitude a connection between the disorder and consent (at the time of consent) is ordinarily established. A number of examples are recorded in the literature.¹⁶⁵

POMPEDDA, "Nevrosi e personalità psicopatiche in rapporto al consenso matrimoniale," in A. DI FELICE (ed.), *Perturbazioni psichiche e consenso nel matrimonio canonico*, Roma, Officium Libri Catholici, 1976, pp. 67-74.

¹⁶³A. MENDONÇA, "The Effects of Personality Disorders on Matrimonial Consent," in *SC*, 21 (1987), pp. 67-123. See also *c.* EGAN, 21 April 1980, *ibid.*, 15 (1981), pp. 330-331; *IDEM*, "The Nullity of Marriage," pp. 47-51; *IDEM*, "Psychopathy and the Posing of an Act of Marital Consent" in *SC*, 10 (1976), pp. 309-310; *c.* PINTO, 26 June 1969, in *SRR Dec.*, 61 (1969), pp. 656-660; *IDEM*, 20 April 1979, *ibid.*, 71 (1979), pp. 189-202; *c.* STANKIEWCZ, 23 July 1981, *ibid.*, 73 (1981), pp. 383-391.

¹⁶⁴LEFEBVRE, "De defectu discretionis iudicii in rotali iurisprudencia," p. 562.

¹⁶⁵BURKE, "Canon 1095: Canonical Doctrine and Jurisprudence," p. 102. See also *c.* RAGNI, 11 July 1986, in *DE*, 97/2 (1986), pp. 475-487; *c.* DI FELICE, 19 October 1985, in *ME*, 111 (1986), pp. 153-161; *c.* GIANNECCHINI, 17 June 1986, in *SRR Dec.*, 78(1986), p. 382.

To summarize, the exercise of discretionary judgement, in the formation of a human act proportionate to valid marital consent, presupposes sufficient cognitive knowledge, sufficient deliberation and sufficient freedom (internal and external). The process itself can be vitiated by serious psychological disorders (habitual or transitory) and by internalized attitudes, opinions and beliefs that are incompatible with the Church's teachings on marriage. The attainment of moral certitude may be possible through a judicial investigation of pre and post consent behaviours and the establishment of an incompatibility between behavioural manifestations and the demands of the process. A discrepancy between the behaviours of the alcoholic and sufficient discretionary judgement has been demonstrated by several Rotal judges.

3.4.1 - Rotal jurisprudence

Although pre and post consent behaviors can provide evidence sufficient to justify a decision for nullity, the focus of adjudication is, nevertheless, the moment of consent. The question for the judge is: was there sufficient psychological maturity in judgment at the time of the exchange of marital consent? The incompatibility between degree of maturity in judgment (frequently associated with alcoholism) and the rights and obligation of marriage is a common theme in the following Rotal decisions.

3.4.1.1 - Decision *coram* SABATTANI, 24 February 1961

The respondent, in this case, was subjected to a dysfunctional family of origin and (before marital consent) manifested a variety of antisocial tendencies, was emotionally

unstable, criminal in behaviour, jailed and hospitalized.¹⁶⁶ The decision was negative at first instance, affirmative at second instance and affirmative *coram* Sabattani.

This case is highly significant for several reasons. First, Sabattani provides the framework for his decision by describing the psychic components necessary for discretionary judgement.¹⁶⁷ Pompedda's elements (cognitive knowledge, critical evaluation and internal freedom) are implicitly contained in his explanation. Second, his careful analysis of available scientific information on alcoholism allows him to make distinctions between acute and chronic alcoholism and between mental debility in the broad and strict senses. Third, he establishes criteria for the transition from behavioural science information to the canonical realm. Fourth, he suggests guidelines for the applications of these criteria that will enable judges to arrive at moral certitude.

Sabattani believes that both acute alcoholism and chronic alcoholism can invalidate consent. Acute alcoholism is defined as follows:

Acute alcoholism prevails for a short time when too great a quantity of alcohol is ingested. The following phenomena are the effects of this condition: first of all there is the arousing of all senses; the man appears beaming in his appearance, quick and cheerful in his work, garrulous and more talkative; there follows confusion of mind; ideas are disordered; the stance as well as walking become difficult; finally, the man is lulled into a deep sleep, he perspires a great deal and becomes almost paralysed. Awakening from

¹⁶⁶The respondent's case history is outlined in WEIST, *Alcoholism and Marriage*, pp. 21-23.

¹⁶⁷c. SABATTANI, 24 February 1961, p. 118.

sleep he experiences a sluggishness in his members, a burning stomach and a bitter taste in his mouth.¹⁶⁸

There is a noteworthy similarity between this definition and Keller's description of alcohol intoxication (Chapter One) and the *DSM-IV* diagnostic criteria for alcohol intoxication (Chapter One). All three quotations refer to interferences in autonomic, cognitive and psychomotor functioning. The definition of chronic alcoholism used by Sabattani is as follows:

Chronic alcoholism is characterized by a complete decline of the intellect, or the memory and of the will, as a result of which the victim appears indifferent, unstable, incapable of concentrating attention or of persevering in a job, and by a loss of the ethical sense causing a deviation of personality. The alcoholic gradually loses self-respect, becomes careless about his person and about the approval of others, cynical, disaffectionate, cruel and obscene. Sexual weakness resulting from the abuse of alcohol not infrequently leads to acts of perversion by which he attempts to satisfy his persistent libido. Under this complex psychic degeneration, definite syndromes emerge among which are delirious forms of a persecution complex, especially serious confrontations with his wife (rages of jealousy or infidelity leading even to conjugicide), Korsakoff psychosis (a combination of memory and attention disorders), and *delirium tremens*.¹⁶⁹

¹⁶⁸Ibid., p. 122: "Alcoholismus acutus obtinet brevi tempore cum nimia quantitas alcoholi ingeritur. Cuius effectus sunt sequentia phaenomena: primum habetur omnium sensuum excitatio; vir efficitur fulgens adspectu, alacer opere, garrulus atque loquacior; sequitur exturbatio mentis, ideae implicantur, statio ac deambulatio aequae difficiles fiunt; tandem vir premitur altissimo somno, multum sudorem emittit, ac paralyticam speciem assumit. Expergefactus, percipit membra languentia, fauces urentes et os amarum." English translation adapted from WEIST, *Alcoholism and Marriage*, p. 36.

¹⁶⁹Ibid., 123: "L'alcoholismo cronico è caratterizzato da un decadimento globale dell'intelletto, della memoria, della volontà, onde l'infermo appare indifferente, instabile, incapace di concentrare l'attenzione o di perdurare in un lavoro, viene specialmente deviato il senso etico della personalità: l'alcoolizzato perde gradatamente il rispetto di se stesso, incurante della persona e dell'altrui riprovazione, cinico, disaffettivo, crudele, osceno. L'indebolimento sessuale, collegato all'abuso dell'alcool, lo spinge non raramente a forme di perversimento, con cui cerca di soddisfare la persistente libidine. Su questo complesso di degenerazione psichica, emergono sindromi definitive, fra cui forme deliranti a contenuto

Again, there is considerable similarity between this definition and the description of the alcohol-dependence syndrome given by Keller (Chapter One) and the *DSM-IV* diagnostic criteria for alcohol dependence (Chapter One). All three quotations describe a complex of affective, cognitive, behavioral and physiological symptoms and a decline in important life areas. Sabattani focuses on the presumed consequences of organismic damage. That is, a decline in the faculties (intellect, memory and will) involved in psychic and moral functioning.

Sabattani states that chronic alcoholism is a “form of mental debility” in the broad sense.¹⁷⁰ This means that *amentia* in the contractual sense is present.¹⁷¹ In the broad sense, mental debility is any mental illness that progresses in severity and results in insanity. This was clearly evident in the case under judgement. Mental debility in the strict sense is a permanent and non-progressive mental condition (e.g., imbecility).¹⁷²

Sabattani departed (in this decision) from earlier Rotal sentences that stated that full proof of perfect drunkenness is required for an affirmative decision.¹⁷³ He maintains that sufficient discretionary judgement may be absent when partial intoxication exists and that each

persecutorio, specie nei confronti della moglie (delirio di gelosia o di infedeltà, portante all'uxoricidio), la psicosi confusionale di Korsakoff ed il *delirium tremens*.” English translation adapted from WEIST, *Alcoholism and Marriage*, pp. 37-38.

¹⁷⁰Ibid., p. 121.

¹⁷¹Ibid., p. 118.

¹⁷²Ibid., p. 121.

¹⁷³c. FLORCZAK, 31 January 1929, p. 83. See also c. MANNUCCI, 28 January 1929, p. 60.

case must be judged on its own merits. He, therefore, presents criteria for the determination of the degree of mental debility.¹⁷⁴ These criteria are:

1. *The duration of the toxic process.* As was stated in Chapter One, the abuse of alcohol over an extended period of time almost invariably results in chronic alcoholism, tolerance and damage to the CNS and other bodily organs. The physical structures that sustain mental functions are damaged, and therefore, consistent normal mental functioning cannot be expected. Without disregarding individual differences, it is reasonable to assume that the longer the period of alcohol abuse the greater the interference to functional capacity.
2. *The gravity of the toxic process.* The behaviours indicative of the gravity of the process are reflective of impairments in cognitive functioning (memory, thinking, concentration, attention), impairments in affective functioning (emotional lability, mood fluctuation, depression, anxiety, jealousy, resentments), psychomotor agitation and imbalances in autonomic functioning. Different terminologies are used by authors to express these impairments. The impairments themselves, however, are always listed. The number present and the severity of the impairments signal the gravity of the process. Impairments due to alcohol abuse become most obvious during Jellinek's *chronic* phase and in his *gamma* type of alcoholism (Chapter One).
3. *Commitments to mental hospitals.* Unless these commitments are for other illnesses, the greater the number of commitments within a given time span the more severe the alcoholism.
4. *Definite signs of insanity.* The ordinary signs of insanity are delirium, hallucinations, and paranoid jealousy. Although individuals differ in awareness of and capacity to control signs

¹⁷⁴SRR Dec., 53 (1961), pp. 123-124.

of insanity as well as in abnormal reactions to alcohol's toxicity, the signs are likely to appear when physical dependence has already been in existence over an extended time period (Chapter One).

5. *Presence of moral anaesthesia.* When an individual engages in behaviours that are not controlled and directed by internalized moral standards, moral anaesthesia is deemed present. The person may seem to be unaware of the respect due to the self or the other or unable to judge appropriateness (cognitive control) or unable to control impulses (volitive control). Probably because of a reluctance to express opinions in ethical areas, not all authors refer to this impairment. They do, however, mention the loss of internal control and irresponsibility in significant life areas (Chapter One). Jellinek states that "ethical deterioration" may be characteristic of the *chronic* phase and of *gamma* alcoholism.

In Sabattani's view, the juridic consequences of these criteria are either full proof of, a presumption for, or a possibility of insufficient discretionary judgement.¹⁷⁵ Full proof is present when all five criteria or three criteria or two criteria (provided one is signs of insanity) are identified. When one criterion is present, a presumption for insufficient discretionary judgement is justified. If none of the criteria are present and there is a definitive diagnosis at the time of consent (of chronic alcoholism), the possibility of insufficient discretionary judgement exists. It is important to note that Sabattani does not accept a definitive diagnosis, in itself, as a canonical proof (only a possibility) of insufficient

¹⁷⁵Ibid., p. 125.

discretionary judgement. He avoids the illegitimacy of directly transposing data from a behavioural science to the canonical field.

Sabattani's decision is solidly grounded in behavioural science data and it delineates an applicable and practical model. Filipiak's approach is somewhat more direct and less complex.

3.4.1.2 - Decision *coram* FILIPIAK 24 January 1964

In his sentence, Filipiak obviously reveals the influence of the European medical and psychiatric approach to alcoholism.¹⁷⁶ This approach accepts chronic alcoholism as a constitutional disorder that results from a genetic and possibly a neuroendocrine defect. The North American understanding is that certain individuals may be more genetically predisposed than others and that certain individuals may be more conditionable (because of a more sensitive nervous system) than others. Nevertheless, within Filipiak's theoretical framework, the definitive existence of chronic alcoholism legitimizes a presumption in favour of lack of sufficient discretionary judgement. Filipiak states that chronic alcoholism is a disease of the mind that excludes the understanding and freedom of will required for the formation of a human act (marital consent). Since the alcoholic respondent already manifested symptoms of hallucinations and delirium, Filipiak did not consider it necessary to establish the degree of mental debility. Filipiak's work illustrates Sabattani's suggestion that the predecision analysis should be governed by the facts of the case. However, two of Sabattani's criteria were present in this case; that is, hospitalization and definitive signs of insanity. Two of the

¹⁷⁶c. FILIPIAK, 24 January 1964, in *SRR Dec.*, 56 (1964), pp. 34-37.

three experts consulted witnessed to the presence of chronic alcohol psychosis. Therefore, full proof, even according to Sabattani's criteria, was present.

3.4.1.3 - Decision *coram* ROGERS, 22 February 1965

In the *in iure* section of his sentence, Rogers states that the human act of consent is possible only when a person can know what the object of consent is, judge its value and act on this judgement.¹⁷⁷ Because of individual differences in tolerance levels, it is difficult to determine when discretionary judgement is excluded by the amount of alcohol consumed. Nevertheless, alcohol intoxication negatively affects the intellect, memory and will. Rogers writes:

Among the causes which seriously disturb the harmony in the mind drinking of alcoholic beverage merits an important place because the substance called alcohol reaches directly the nervous system of the cerebral cortex. Since the rational, that is, mental faculties use the brain as the proper organ, suffer quicker and stronger weakening in inebriety, the excessive use of alcohol constricts the activity of the intellect, dulls the will, and clouds the memory.¹⁷⁸

This description of the impact of alcohol abuse on the organism is quite similar to Keller's account of alcohol intoxication (Chapter One) and the *DSM-IV* criteria for alcohol intoxication (Chapter One). In terms of the quantity consumed, the petitioner's BAL would have been in excess of 150 mg per 100 ml (Chapter One).

¹⁷⁷c. ROGERS, 22 February 1965, *ibid.*, 57 (1965), pp. 210-211.

¹⁷⁸*Ibid.*, p. 211: "inter causas quae mentis aequilibrium graviter perturbant, aitiorem locum merito tenet potatio liquoris alcoholici, quippe quod substantia, quam alcohol vocant, systema nerveum ut ipsum cerebri corticem directe attingit. Facultates rationales seu mentales, cum cerebro tamquam proprio utantur organo, priorem et potiore deminutionem patiuntur in ebrietate, ita ut ex nimio alcoholicae substantiae usu, acies intellectus praestringatur, voluntas hebetet, memoria obnubiletur."

Rogers suggests that moral certitude can be attained through the application of the following practical criteria: 1. the behaviour of the party; 2. the volume and quality consumed; 3. the observations of reliable witnesses who can differentiate between sobriety and drunkenness; 4. the testimony of the party alleging drunkenness at the time of consent; 5. the drinking pattern of the party prior to the marriage.¹⁷⁹ The petitioner, in this case, was intoxicated at the marriage ceremony. This decision contributes significantly to jurisprudence in so far as it clearly states that alcohol intoxication can, in itself and apart from other variables, vitiate through its effects on the higher mental faculties, the discretionary judgement necessary for consent at the moment of consent.

3.4.1.4 - Decision *coram* PALAZZINI, 17 May 1972

The declaration of nullity in this case was originally petitioned before the Washington (DC) matrimonial tribunal on the grounds of exclusion of the good of the sacrament on the part of the respondent. After a rejection by the first tribunal, the respondent appealed against the decree of rejection to the Rota. The Rota rescinded the decree of rejection and processed the case on the basis of exclusion of the good of the sacrament and defect of discretion of judgement on the part of the respondent. Palazzini's affirmative decision was later confirmed by decree *coram* Rogers, on 5 December 1972. Palazzini describes five possible behavioural manifestations of chronic alcoholism, namely: alcohol hallucination, delusions of jealousy, alcoholic epilepsy, *delirium tremens* and *Korsakoff's* psychosis. Within this descriptive framework (remarkably similar to Jellinek's *crucial* and *chronic* phases), it was readily determined that the respondent lacked discretionary judgement proportionate to the

¹⁷⁹*Ibid.*, p. 212.

obligations of marriage because of chronic alcoholism at the time of consent. Influenced by Sabattani's decision of 24 February 1961, Palazzini states that alcoholism can be considered a mental debility in the broad sense because of its impact on the individual's functioning and important areas of his/her life.¹⁸⁰ This impact is described in terms of emotional lability, depression, lack of discernment, inability to control impulses, irresponsibility (family, work and social relationships), and deterioration in acts of the intellect and will.¹⁸¹ Palazzini's sentence is based firmly in Sabattani's five criteria and four juridic consequences (24 February 1961).

3.4.1.5 - Decision *coram* DAVINO, 5 February 1975

This case originated in Buffalo. The experts consulted discussed the possibility that the respondent suffered from alcoholism and an antisocial personality disorder. A negative decision was rendered at first instance. At second instance, it received an affirmative decision. The Rota pronounced a negative decision on the grounds of lack of due discretion.

Davino reiterates the basic juridic principle that the human act of consent must be proportionate to the seriousness of the transaction involved. He states that any condition that seriously affects the functioning capacity of the intellect, the will, or both can be a source of

¹⁸⁰c. PALAZZINI, 17 May 1972, in *SRR Dec.*, 64 (1972), p. 301.

¹⁸¹*Ibid.*

marriage nullity.¹⁸² For him, the diagnostic label is of little significance and discretionary judgement could be adequate for other areas and, nevertheless, inadequate for valid consent. A negative decision was rendered only because the evidence presented did not provide sufficient proof of the existence of the alleged conditions (chronic alcoholism and antisocial personality disorder).¹⁸³

3.4.1.6 - Decision *coram* STANKIEWICZ, 21 January 1982

This case was first processed in Poland. The ground was *amentia* resulting from the respondent's chronic alcoholism. It received a negative decision at first instance. The second instance court requested that the petitioner withdraw her petition. The petitioner then requested that her case be referred to the Roman Rota.¹⁸⁴

Stankiewicz examined the case under the grounds of lack of discretionary judgement. He stated that the cases cited above provided the framework for the determination that the respondent, a diagnosed chronic alcoholic, was incapable of discretionary judgement. He analyses the impact that alcoholism can have on the cognitive, affective and volitive

¹⁸²c. DAVINO, 5 February 1975, in *SRR Dec.*, 67 (1975), pp. 42-43: "Extra controversiam est matrimonium constitui non posse nisi per actum humanum proportionatum negotio gravissimo de quo agitur. Ut talis actus humanus debitam proportionem servet necesse est ut gaudeant contrahentes non solum scientia ex parte intellectus sed etiam capacitate libere sese determinandi ad agendum, capacitate nempe eligendi id quod sub ratione boni apprehenditur... Exinde fit, ut si quis, apparenter debita iudicii discretionem gaudens, ob quamdam morbosam conditionem, quae sphaeram voluntatis ingrediatur, privetur capacitate sese libere determinandi ad contrahendum matrimonium, eius consensus invalidus censendus est."

¹⁸³Ibid., p. 47.

¹⁸⁴c. STANKIEWICZ, 21 January 1982, in *ME*, 107 (1982), p. 344-353.

components of the act of consent. He does not automatically conclude that alcoholism excludes the possibility of discretionary judgement. Rather, he advocates an assessment of the changes in personality and an assessment of the severity of the damage to psychic functioning dependent upon higher faculties.¹⁸⁵ Deterioration in personality and psychic functions must be such that sufficient discretionary judgement is excluded.

3.4.1.7 - Decision *coram* RAGNI, 26 November 1985

This case originated in Trento, Italy. Its unique contribution is its emphasis on the process involved in the formation of valid consent and its extension of the psychic component implicit in the incapacity of c. 1095, 2°. Although lack of sufficient discretionary judgment alone has juridic relevance in this context and the cause need not be obvious, it is reasonable to assume that a deficit causes interference with intellectual and volitional functions. Ragni's *in iure* section provides a response to the question: "What is the most comprehensive context within which the subject's incapacity for consent can be understood?" This response contains a description of acute and chronic alcoholism, extensive quotes from the *DSM-III-R*¹⁸⁶ on "Organic Mental Syndromes and Disorders", and the application of this material to the canonico-juridic order.¹⁸⁷

¹⁸⁵Ibid., p. 349.

¹⁸⁶See *Diagnostic and Statistical Manual of Mental Disorders (DSM-III-R)*, pp. 97-99.

¹⁸⁷c. RAGNI, 26 November 1985, in *SRR, Dec.*, 77 (1985), pp. 545-548.

In the case under study, it was obvious that chronic alcoholism had resulted in personality and affective changes. The individual was, therefore, unable to assess the situation with accuracy and incapable of establishing an interpersonal relationship. Since the individual's behaviors correlated with organic symptoms listed in the *DSM-III-R*, the *ponens* concluded that chronic alcoholism had caused organic damage. The analysis outlined by Ragni is: chronic alcoholism causes organic damage to those physical structures involved in the effective functioning of the intellect and will; therefore, the process of forming an efficacious and proportionate discretionary judgment is seriously impeded. He writes:

Therefore, Rotal jurisprudence considers, under the rubric of "lack of discretion of judgment proportionate to marriage," the physical and psychic or psycho-physical defects which impede the necessary process of intellectual and volitive faculties necessary to formulate a practical judgment by which a person deliberates on the course of action he or she should take, or to consolidate the very choice concerning matrimonial consent.¹⁸⁸

For Ragni, the total organism (physical and psychic) is involved in the exercise of efficacious and proportionate discretionary judgment. Discretionary judgment is efficacious when the subject accurately assesses the marriage, the self (as actualizer of rights and obligations) and when an informed choice is freely made. The decision in this case was affirmative because the processes involved in deliberating and choosing were seriously impeded. This sentence seems to illustrate Örsy's point that "the dividing lines among the three types [of incapacity]

¹⁸⁸Ibid., pp. 549-550: "Unde defectus physici vel psychici vel psycho-physici, qui praepediunt necessarium progressum facultatis intellectivae et volitivae sive ad iudicium practicum efformandum, quo homo deliberat quid agere debeat, sive ad constabiliendum ipsum propositum agendi, quando matrimonialem consensum respiciunt, sub nomine 'defectus discretionis iudicii matrimonio proportionatae' iurisprudencia Rotalis considerat."

cannot be always clearly drawn.”¹⁸⁹ Ragni suggests that the individual who cannot actualize marital obligations cannot efficaciously engage the will component of c. 1095, 2°.

3.4.1.8. - Decision *coram* RAGNI, 11 June 1991

An affirmative decision was issued in this case in the first instance (Providence, RI) “because of the lack of discretion.”¹⁹⁰ The appeal court confirmed the decision by decree on 6 September 1983.¹⁹¹ The respondent appealed the decision to the Apostolic Signatura claiming that he did know that he had a right to an advocate’s assistance, that his questions about legal procedures were not answered by the judges, that the appeal court had not heard him before ratifying the sentence and that the process had been instructed without his knowledge.¹⁹² The Apostolic Signatura transferred the case to the Roman Rota for a new examination. The Rota joined the issue on the grounds of a lack of discretion of judgement in one of the parties or in both¹⁹³ and appointed an expert. The Rota gave an affirmative decision to the lack of discretion on the part of the respondent only with a *vetitum* reserved to itself.¹⁹⁴

¹⁸⁹ÖRSY, “Matrimonial Consent in the new Code,” p. 40.

¹⁹⁰c. RAGNI, 11 June 1991, in *SRR Dec.*, 83 (1991), p. 385: “... per mancanza di dovuta discrezione ...”.

¹⁹¹*Ibid.*

¹⁹²*Ibid.*

¹⁹³*Ibid.*: “... An constet de matrimonii nullitate, in Casu, ob defectum discretionis iudicii in alterutra vel ab utraque parte.”

¹⁹⁴*Ibid.*, p. 398: “Affirmative seu constare de nullitate matrimonii, in casu, sed tantummodo ob defectum discretionis iudicii in viro convento, vetito eidem transitu ad alias

In the *in iure* section, Ragni states that there are two general criteria in use at the Rota for determining whether or not discretionary judgement is proportionate. First, if the harmonious interaction between the intellect and will appears normal but is, in fact, seriously disturbed for whatever reason, then proportionate freedom of choice is not present and, consequently, the discretionary judgement is disproportionate. Second, serious psychopathology, in any of its forms, can eliminate the capacity to think critically and choose freely at the time of consent and thus proportionate discretion is not present. In such a case, it is not the psychopathology itself but, rather, its impact on the superior faculties that is significant. Against the background of these criteria, the *ponens* discussed alcoholism relying extensively on the WHO's publications.

Ragni admits that diversity of opinion and different terminologies have caused confusion in the field of alcoholism. He attempts to introduce some order by repeating the WHO's distinction between an alcohol-related disability (alcoholism interacts with and intensifies another impairment) and an alcohol dependence syndrome (alcoholism is the primary symptom).

Ragni states that alcohol abuse, as a general term, can encompass such concepts as alcohol dependence, alcohol intoxication, alcohol tolerance, alcohol deterioration, alcohol disability and periodic alcoholism. He also mentions a pre-alcoholic or latent stage of the disorder. If an individual continues to abuse alcohol, during this stage, the disorder may suddenly erupt and serious damage is then manifested through a variety of symptoms. In any

nuptias inconsulto Hoc Apostolico Tribunali."

event, as an individual continues to abuse alcohol over an extended period of time, there is inevitable and progressive damage to the entire organism. Ragni states:

When alcoholism becomes chronic the main signs, or more properly speaking, damages of the abuse of alcohol occur in the intellective and volitive faculties. Therefore, intellectual processes, critical thinking, memory, even perception are distorted due to the abnormal functioning of the brain centres caused by alcohol ingestion... Other anomalies caused by chronic alcoholism occur in the drinker's affectivity and judgement of character... [so that he] becomes unable to think, to will, to love ... and to really engage in an interpersonal relationship with a spouse or other people.¹⁹⁵

Ragni recommends that the judge, utilizing the *Acta* and the expert's report, make a decision about the quality of consent at the time it was exchanged. In order to do so he/she must estimate the extent to which the party's moral, intellectual and affective deterioration have impaired his/her understanding of the self, of the community of life and love, of conjugal rights and of the *bonum proles*. Therefore, degree of deterioration and impact of deterioration on understanding are the crucial factors for the decision-making process. By analysing the testimonies, in this case, the judges determined that there was evidence, both before and after consent of serious deterioration especially in the affective area (self-pity, resentment, disrespect of others). In addition, they were able to demonstrate that the respondent's deterioration rendered him incapable of understanding the consequences of his

¹⁹⁵Ibid., p. 388-389: "Praecipua signa seu vestigia vel aptius vocanda damna ex alcoholicae substantiae abusa cum alcoholismus fit chronicus, invisuntur in facultatibus intellectus et voluntatis. Centra sunt cerebralia, quae alterationes biologica patiuntur, pandunt consequenter perturbationes in illarum facultatum exercitationibus; quapropter actio intellectiva, facultas critica, memoria, perceptio ipsa detorquentur causa abnormis centrorum cerebralium motus ab alcoholica suptione... Aliae anomaliae gignuntur, sub alcoholismi chronici influxu, in agro subiecti affectivitatis necnon circa propriam personae aestimationem ... incapax evenit cogitandi, volendi, amandi ... necnon colloquium interpersonale, uti illud coniugale, sane alia persona instituendi et ita porro."

behaviour and of understanding the petitioner's right to a community of life and love. In an unusual move (before analysing the testimonies), the *ponens* commented on the respondent's attitude and his hypothesized motives for appeal.¹⁹⁶ Ragni illustrates, in this decision, that it is not a disorder but its impact that is endowed with juridic significance.

3.4.2 - Common jurisprudential themes

All the Rotal decisions discussed above reflect an acceptance of the fact that valid consent presupposes the capacity to perform a human and juridic act. One requirement of an informed human act is adequate cognitive content. When this content is absent on a permanent or transitory basis, the human act of consent cannot be initiated. If the degree of acute alcoholism or acute intoxication at the time of consent is such that sufficient knowledge of the object is excluded, then consent can be judged invalid even in the absence of other identifiable abnormalities (Quattrocolo; Stankiewicz; Burke; Funghini). The degree of intoxication, therefore, and not complete drunkenness is the determining factor (Funghini; Faltin). These cases may be most appropriately adjudicated on the basis of c. 1095, 1° (C. Burke; Stankiewicz).

A second theme in these decisions is the distinction between acute and chronic alcoholism. Chronic alcoholism in Sabattani's and Palazzini's terms is progressive and a mental debility in the broad sense. It represents an advanced stage of alcohol dependence. Burke states that "long-standing alcoholism can so weaken the psychic faculties that a person,

¹⁹⁶Ibid., p. 390: "Quapropter, conventi modus agendi hoc in processu sinit opinare non rectam adhibuisse rationem in expetendam iustitiam canonicam, sed tantum, iure canonico utens vel abutens quid adversus mulierem actricem moliri."

at least in the moment of giving consent, necessarily suffers from a grave lack of discretion of judgement; and in this case the consent is invalid under c. 1095, 2^o.¹⁹⁷ The presence of chronic alcoholism and/or alcohol dependence do not, in and of themselves, cause insufficient discretionary judgement. What must be determined, for an affirmative decision, is that the alcoholism in the individual is incompatible with the human act proportionate to the object. When the human act of consent is disproportionate to its formal object, *amentia* in the contractual sense is present. As Burke claims: "Alcoholism, even if proven to have been present at the moment of the wedding, does not necessarily provoke consensual incapacity under 1095, 2^o. Proof must also be provided that alcohol dependence has a gravely impairing effect on the person's faculties of decision and choice at the time in question."¹⁹⁸ "Gravely impairing effect" can be inferred from personality changes (Stankiewicz; Ragni, 1985; Ragni, 1991), deterioration, behavioral manifestations and damage to the ANS and CNS. Damage to the CNS is particularly relevant since the functioning of the higher faculties (intellect and will) is thought to be dependent upon the brain (Sabattani; Filipiak; Rogers; Stankiewicz; Ragni).

Is an insistence by Rotal judges that it is the impact of alcoholism at the time of consent (Rogers; Funghini; Faltin; Sabattani; Ragni) that has juridic relevance and not a diagnosed psychopathology, as such, in conflict with John Paul II's ordinary teaching in his

¹⁹⁷c. BURKE, 2 December 1993, p. 510.

¹⁹⁸_____, 29 April 1993, in *SC.*, 28 (1994), p. 247.

February 5, 1987 allocution to the Roman Rota?¹⁹⁹ A careful reading of the allocution does not reveal a conflict. John Paul II suggests that an interference sufficiently serious to vitiate consent presupposes the existence of a genuine defect. His interest (like the Rotal judges), however, is in the juridic relevance of the interference and not in the diagnosis.

A third theme embodies a caution against generalization. There must be an awareness of individual differences in tolerance for alcohol (Funghini; Faltin; Rogers) and judgments must be grounded in the unique facts of the case. A fourth theme is that a juridic evaluation, consisting of the application of the principles of jurisprudence and of Christian anthropology, must intervene between expert opinion and final decision (Funghini; Faltin). The accumulated wisdom contained in these published Rotal decisions is beneficial to judges who study cases in local tribunals.

Conclusions

The Church's essential teaching on marriage is contained in encyclicals and in conciliar documents. This chapter makes reference to material contained in *Arcanum*, *Casti connubii*, *Gaudium et spes*, *Humanae vitae*, and *Familiaris consortio*. *Arcanum* preceded the 1917 Code; however, the other works were published between the 1917 Code and the 1983 Code. Although the emphasis from document to document is somewhat different, all documents focus on the dignity and sanctity of the marital state as a God given means of salvation. *Gaudium et spes*, while faithful to traditional teaching, uses biblical language to capture the essence of marriage as an "intimate partnership of married life and love." This same document does not distinguish between the primary and secondary ends of marriage because

¹⁹⁹See WOESTMAN *Papal Allocutions to the Roman Rota 1939-1944*, p. 194.

the procreative and unitive meanings of marriage are interrelated and because marriage is the intimate partnership that can exist without (and does exist in time before) fecund procreation.

The canons, in the 1983 Code, on the nature of marriage and the nature of marriage consent (cc. 1055 and 1057), attempt to capture, reflect and express in legal form the profoundly meaningful, accurate and realist teaching of the Church on marriage as contained in *Gaudium et spes*. An attempt has been made, in this chapter, to summarize the meanings and implications of the content of some of these canons.

Prior to the new Code's promulgation in 1983, Rotal judges were familiar with the content and legal implications of *Gaudium et spes*. By 1983, therefore, a body of jurisprudence already existed that anticipated the content of the canons on marriage in the new Code. Since the Code speaks to the nature of marriage and marriage consent, it must also speak to the requirements necessary for entrance into the marital state (c. 1095). *Gaudium et spes* and the Code both emphasize the rights of individuals to the means of salvation, including marriage as one means. If a marriage does not exist as a means of salvation because of some defect, the Church, in light of its pastoral concerns, can say so through a jurisprudential declaration of nullity. One of the laws that the Church uses to ground a declaration of nullity is c. 1095, 1° and 2°. This chapter, therefore, discusses c. 1095, 1° and 2°, its meaning and its application in jurisprudence with particular reference to alcoholism. The various definitions of alcoholism presented in Chapter One and the treatment of alcoholism in jurisprudence emphasize the fact that it exists as an entity and that it can have a serious impact on capacity to understand, evaluate, consent to and fulfill marital obligations. Acute alcoholism in jurisprudence is equivalent to acute alcohol intoxication.

Both canon lawyers and psychologists would agree that the more serious the degree of intoxication (Funghini; Faltin) the greater the probability is that an informed decision will be excluded even in the absence of complete incapacity. When acute intoxication is identified, a consideration of the concepts of psychological and/or physical dependence, the clinical features of alcoholism, the various phases, types, and states of alcoholism can but need not enter into the process of arriving at moral certitude (Rogers). Likewise, an individual could be on an isolated binge and/or in an amnesic period, free from psychotic symptoms and appear normal (Faltin). Nevertheless, his/her BAC could be above 150 mg per 100 ml and he/she might not subsequently be able to recall the exchange of consent. In all such cases, the focus is on the condition of the individual at the moment of consent and *amentia*, in the contractual sense (Sabattani), would ordinarily be judged present. Also, if an individual was experiencing withdrawal symptoms but able to function in a somewhat normal manner, a judge would have to give serious consideration to the impact of these symptoms on capacity.

The impact of alcohol abuse is more problematic. The criteria for alcohol abuse (in the *DSM*) do not directly include psychological dependence, physical dependence or psychotic symptoms. The criteria suggest that undue reliance on alcohol results in a failure to fulfill life's obligations and, in general, poor judgement. There are no known cases in Rotal jurisprudence where a decision is grounded in alcohol abuse. Stankiewicz refers to a distinction between drug abuse and drug dependence.²⁰⁰ The judgement, in a particular case, that alcohol abuse is incompatible with sufficient discretionary judgement would be grounded in degree of abuse, degree of interference and probably reasons for abuse. If the degree of

²⁰⁰c. STANKIEWICZ, 23 February 1990, p. 302.

abuse is serious and marriage is entered, the individual's capacity to assess his/her ability to fulfill obligations and his/her appreciation of these obligations are in question. In cases of alcohol abuse, the issue may be more accurately joined on the basis of canon 1095, 3°.

In contrast to alcohol abuse, cases involving severe alcohol dependence (under the label "chronic alcoholism") have received extensive study in Rotal jurisprudence. Ordinarily, alcoholism is identified with alcohol dependence. As noted in Chapter One, clinically significant alcoholism with psychological dependence can exist without tolerance, withdrawal or psychotic symptoms. When such is the case, the judge may again have to base his study in degree of dependence and level of interference with the capacity to fulfill life's obligations in several different areas. In terms of Sabattani's legal criteria only the possibility of insufficient discretionary judgement exists when alcohol dependence is clearly demonstrated.

With symptoms of physical dependence, tolerance and withdrawal, the individual is more seriously involved (psychologically and physically) with alcohol, could be classified as a *gamma* or *delta* alcoholic and could be in Jellinek's *crucial* or *chronic* phase. This is roughly equivalent to what Rotal judges classify as chronic alcoholism.

In the Rotal sentences discussed above, the judges rendered affirmative decisions in all clearly demonstrated cases of chronic alcoholism. They concluded that there is an incompatibility between chronic alcoholism, with or without psychotic symptoms (Sabattani), and sufficient discretionary judgement. For Rotal judges, there would not be a question of sufficient discretionary judgement when psychotic symptoms accompany alcoholism. It is reasonable to conclude, therefore, that the alcoholic states of the *Wernicke-Korsakoff*

Syndrome, Alcohol Dementia, Alcoholic Paresis and Alcoholic Paranoia would provide full proof of insufficient discretionary judgement.

Rotal jurisprudence appears currently to confirm that severe alcohol intoxication can be proven to be incompatible with sufficient use of reason and severe alcohol dependence can be proven to be incompatible with sufficient discretionary judgement. In the future, adjudicated cases involving alcohol abuse, psychological dependence, *alpha*, *beta* and *epsilon* alcoholism may expand jurisprudence as well as our understanding of alcoholism.

The expansion of jurisprudence that may occur through the integration of behavioral science discoveries is a significant challenge. This challenge exists because there is not a one-to-one correspondence between terms used in jurisprudence's philosophical framework (intellect and will) and terms used in the behavioral sciences (affect, cognition, intelligence, motivation). The transition from behavioral science data to a decision is currently achieved through the application of jurisprudential and Christian anthropological principles. Terms effectively used for this transition include "intrapersonal" (personality) integration and "interpersonal" (interpersonal relationship) integration (Serrano; Anné; Ragni). The *bonum coniugum* may yet prove to be a pivotal concept for our understanding of the capacity to give consent to a vocation that is essentially a specific, exclusive, perpetual, unique, intimate interpersonal relationship with its own rights and obligations.

Despite the challenges that face it, jurisprudence continues to develop. This development is found, for example, in decisions that claim that complete drunkenness is not necessary for a declaration of nullity, that decisions must be grounded in the facts of the case, that each case must be examined on its own merits and in its cultural context, and that severe

alcoholism, in the absence of psychotic symptoms, can destroy the requirements of sufficient use of reason and proportionate discretionary judgement.

It cannot be stated that alcoholism, in itself, is incompatible with marital consent. The disorder is not endowed with juridical significance. However, as stated above, the degree of acute intoxication at the time of consent can be such that the judge can be morally certain that sufficient use of reason was not present. Likewise, alcohol dependence and chronic alcoholism do not invalidate. However, if it is demonstrated that the capacity to evaluate critically and to choose freely are seriously impaired through alcoholism, then the judge may be morally certain that proportionate discretionary judgement specific to marital consent was not present at the time of the attempt to exchange consent. Chapter Four will examine the compatibility between alcoholism and the capacity to assume the essential obligations of marriage.

CHAPTER FOUR

ALCOHOLISM AND THE INCAPACITY TO ASSUME THE ESSENTIAL OBLIGATIONS OF MARRIAGE

INTRODUCTION

The incapacity to assume is, like the other species of incapacity, rooted in a natural law interpretation of the human act. Its formulation (new in the 1983 Code) reflects the influence of canonical doctrine and jurisprudence on the Code's revision. In its expression of a natural law principle, it is an example of ecclesiastical law that is amenable to further clarification and development.¹ Canon 1095, 3° contains elements characteristic of the canon's first two species of incapacity. For example, the incapacitating defect must be internal to the subject² and a disproportionality between human act requirements and the formal object of marriage is either stated or implied. The fact that "rights" are not included in c. 1095, 3° is probably irrelevant since obligations and rights always co-exist in canon law (cc. 208-223). The mutuality and equality integral to marital consent and to the marital state speak to the ability to accept rights and the capacity to fulfill obligations (cc. 1057, §2, 1135).

It is commonplace to state that c. 1095, 3° is distinguishable from the first two species of incapacity by the fact that the inability to fulfill renders the attempt to assume (and

¹See JOHN PAUL II, Allocution to the Roman Rota, 26 January 1984, in *AAS*, 76 (1984), pp. 643-649. English adaptation in WOESTMAN, *Papal Allocutions to the Roman Rota 1939-1994*, p. 185: "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 expert Jurisprudence of the Rota could make a valuable contribution."

²C. BURKE, "The Distinction Between 2° And 3° of Canon 1095," in *The Jurist*, 54 (1994), p. 231.

therefore the act of consent) inefficacious. In the first two species of incapacity, consent is said to be defective because the psychological act itself is lacking some constitutive element; whereas, with c. 1095, 3° the “content of the consent itself” renders an otherwise sufficient psychological act defective.³ In any event, the explicit mention of “incapacity to assume” and “causes of a psychological nature” clearly differentiates this species from the other two species. In this third species, the subject must not only comprehend and evaluate essential obligations but the capacity to assume and fulfill them must coincide at the moment of consent.⁴

The law, itself, concretizes a number of obligations when it refers to essential elements and essential properties. In addition, canonists have developed jurisprudential principles (gravity, antecedence, perpetuity, relativity) that guide the application of the law to individual cases. These obligations and principles are of unique significance for this chapter’s discussion of the alcoholic’s incapacity to assume marital obligations. The hypothesis of this chapter is: an alcoholic is incapable of assuming the essential obligations of marriage. A brief clarification of essential obligations and canonical principles will precede a discussion of the impact of alcoholism on the assumption and fulfillment of obligations in light of relevant Rotal jurisprudence.

³See POMPEDDA . “Incapacity to Assume,” p. 172. However, in all cases, it is the internal act of consent itself that is objectively deficient. If this were not the case a valid covenant would exist. If an individual does not possess the internal freedom to assume (c. 1095, 3°), he/she may not possess the internal freedom required to objectively evaluate the self in relation to the formal object (c. 1095, 2°). See also G. CANDELIER, “Le relation entre le 2° et le 3° du canon 1095,” in *SC*, 32 (1998), pp. 47-95.

⁴c. STANKIEWICZ, 16 December 1982, in *EIC*, 39 (1983), p. 257.

4.1 Essential obligations

Within this *caput* of the incapacity to assume, there can be as many reasons for nullity as there are essential obligations.⁵ Some of these obligations were discussed in Chapter Three in the sections entitled “The Nature of Marriage” and “The Nature of Consent.” The identification of the elements of the *consortium totius vitae* is an evolutionary and cooperative task for behavioral scientists, theologians and canonists. At the present time, jurisprudence recognizes the significance of a healthy interpersonal relationship as the context within which all other rights and obligations are actualized.⁶ Although there are minor differences from author to author in the descriptions of essential obligations, most agree that the essential obligations are determined by the nature of marriage and are derived from its *bona* implicitly contained in c. 1055.⁷ Giannecchini provides the following summary of the

⁵See MENDONÇA, “Consensual Incapacity for Marriage,” pp. 508-524. See also IDEM, “The Incapacity to Contract Marriage,” pp. 298-303; c. STANKIEWICZ, 16 December 1982, pp. 258-259.

⁶See c. SERRANO, 22 November 1985, in *SRR Dec.*, 77 (1985), pp. 517-518: “In order to understand the newest species of incapacity, one must keep the following in mind: ‘– The incapacity for establishing interpersonal relationship should extend to the total person of both spouses, that is, to those aspects of one’s character bonding the persons to each other. This is so not only because the term *se* (‘themselves’) means it and the law has placed it within the totality of the union – they establish between themselves a partnership of the whole of life’ (cf. c. 1055) – but also because, with the teaching of Vatican Council II . . . *Gaudium et spes*, n. 48: ‘an intimate community of life and conjugal love is established by the irrevocable personal consent’ – the present law no longer restricts the term of conjugal consent to acts *per se apt* for the generation of offspring’.” See also c. BRUNO, 19 July 1991, in *ME*, 117 (1992), p. 173; c. ANNÉ, 22 July 1969, pp. 865-867; c. LEFEBVRE, 31 January 1976, in *SRR Dec.*, 68 (1976), pp. 39-40.

⁷POMPEDDA, “Incapacity to Assume,” p. 190. See also c. STANKIEWICZ, 16 December 1982, pp. 258-259; MENDONÇA, “Consensual Incapacity for Marriage”, pp. 513-536.

obligations and rights contained in the 1983 Code:

The essential rights, duties and obligations which pertain to matrimony are many and intimately connected, for example: "consortium of the whole of life . . . ordered toward the good of the spouses and the generation and education of children" (c. 1055), by which a man and a woman "hand over and accept by an irrevocable covenant" (c. 1057, §2) to constitute a "permanent consortium" (c. 1096), joined "by a bond by its very nature perpetual and exclusive" (c. 1134), handing over to one another the right "to the conjugal act per se apt for the generation of children" (c. 1061), equal dignity and right in exercising "the duties of their state" (c. 1034), namely, "those things that pertain to the consortium of conjugal life" (c. 1135).⁸

4.1.1 - The marriage itself

The parties must first will the establishment of the marriage itself or "the partnership of the whole of life" (c. 1055, §1). The exclusion of the marriage itself invalidates consent and violates the right of the other party (c. 1101, §2). In addition, a condition attached to the consent to enter marriage itself can be of such force that its verification invalidates consent (c. 1102). For example, an adult child of an alcoholic determines that he/she will not marry an alcoholic. The other party is fully aware of this and cleverly conceals his/her alcoholism in order to procure consent (c. 1098).

4.1.2 - The *bonum coniugum*

Although the concept of the *bonum coniugum* has a solid doctrinal foundation in

⁸c. GIANNECCHINI, 17 June 1986, p. 539: "Plura et intime connexa sunt iura, officia et obligationes essentialia quae ad matrimonium pertinent, uti, 'consortium totius vitae' ... 'bonum coniugum ad prolis generationem et educationem ordinatum' ... (c. 1055), in quo vir et mulier 'foedere irrevocabili sese tradunt et accipiunt' (c. 1057, §2) ad illud constitutendum tamquam 'consortium permanens' (c. 1096), 'vinculo natura sua perpetuo et exclusivo' coniuncti (c. 1134), invicem commutantes ius ad 'conjugalem actum per se aptum ad prolis generationem' (c. 1061), pari dignitate ac ratione exercentes 'sui status officia' (c. 1034), nempe 'quae pertinent ad consortium vitae coniugalis' (c. 1135)."

earlier encyclical letters,⁹ the development of its jurisprudential meaning appears to have been grounded primarily in the teaching of *Gaudium et spes*, n. 48, and its personalistic emphasis. Thus, in the Rotal decisions prior to the 1983 Code, there is an attempt to clarify the juridical relevance of the relationship between phrases such as, a communion of life, the *bonum coniugum*, the marital interpersonal relationship and the *consortium*.¹⁰ The right to the actions that essentially constitute a communion of life eventually finds juridical relevance in the *bonum coniugum*. The impetus for this move from magisterial teaching to canonical meaning appears to have been provided by Pompedda:

Indeed our opinion is that the question ought to be changed so that the good of the spouses – the only one treated in the new code, which no longer makes mention of the right to communion of life – ought to be understood and brought about as the right (and correlative obligation) to the communion of life: understood in its broad significance, ideally inspired toward conjugal love as the Second Vatican Council placed it, and expressed juridically by the rights and obligations associated with a unique or specific way of acting in interpersonal relationships proper to spouses, determined by what is essentially required and adequate from the nature of marriage and having juridical importance.¹¹

⁹See *Arcanum*, n. 26. See also *Casti connubii*, n. 59.

¹⁰See c. ANNÉ, 25 February 1969, pp. 183-184; IDEM, 22 July 1969, p. 865; c. POMPEDDA, 19 February 1982, in *SRR Dec.*, 74 (1982), p. 87; c. PINTO, 12 February 1982, *ibid.*, 74 (1982), p. 64.

¹¹c. POMPEDDA, 11 April 1988, in *SRR Dec.*, 80 (1988), p. 202: “Nostra quidem sententia aliquomodo quaestio converti ita debet, ut bonum coniugum – de quo uno agit Codex, nulla amplius facta mentione de iure ad vitae communionem – intelligatur et efficiatur per ius (et relativam obligationem) ad vitae communionem: istam quidem intellectam in sua latiore significatione, idealiter inspiratam ad amorem coniugalem super quo diu institit Concilium Vaticanum II, et iuridice expressam per iura et obligationes ad peculiarem seu specificam agendi rationem, ex ipsa connubii natura essentialiter requisitam et sufficientem, in relationibus interpersonalis coniugibus propriis et iuridice momentum habentibus.”

This quotation contains the assertion that “the right to communion of life” is the legal foundation (in canonical terms) for the *bonum coniugum* and that a unique marital interpersonal relationship is of the essence of the *bonum coniugum*. Several subsequent Rotal sentences are in agreement with Pompedda’s view and claim that the *bonum coniugum* is an essential element of marriage.¹² All of these decisions imply that the *bonum coniugum* necessitates spousal actions unique to the marital state. These actions will result in a mutual interpersonal and progressive psychosexual integration designed to establish and sustain conjugal life.¹³

The question remains: is it possible to be more descriptive of these unique spousal actions? Jurisprudence and magisterial teaching provide some guidance. “Affective maturity”¹⁴ and “normal intrapersonal and interpersonal relationships [. . .] promote the spiritual, intellectual, physical, moral and social good of the spouses.”¹⁵ Equality between the spouses (cc. 208, 1135) and the right to be treated with dignity must be respected by both

¹²See *c. COLAGIOVANNI*, 8 May 1990, in *SRR Dec.*, 82 (1990), p. 358. See also *c. STANKIEWICZ*, 28 May 1991, *ibid.*, 83 (1991), p. 348; *c. BRUNO*, 30 March 1990, *ibid.*, 82 (1990), p. 254.

¹³See *c. STANKIEWICZ*, 28 May 1991, p. 348. See also *c. BRUNO*, 30 March 1990, p. 254; *IDEM*, 19 July 1991, p. 466.

¹⁴See *c. CIVILI*, 22 November 1994, in *SRR Dec.*, 86 (1994), p. 570. See also *c. STANKIEWICZ*, 23 June 1988, *ibid.*, 80 (1988), p. 419.

¹⁵See *c. BRUNO*, 18 December, 1987, *ibid.*, 79 (1987), p. 765.

parties,¹⁶ normal sexual acts performed in a human manner,¹⁷ communication,¹⁸ cooperation and agreement in decision-making¹⁹ all contribute to the *bonum coniugum*.

Contrary to Cormac Burke's opinion,²⁰ Rotal jurisprudence seems to confirm that the *bonum coniugum* is an essential element of marriage.²¹ This essential element continues to be discussed and clarified in Rotal sentences primarily within the context of the incapacity to assume.²² At present, the content of *bonum coniugum* is not comprehensively defined. Nevertheless, jurisprudence has already determined that, by virtue of the *bonum coniugum*, the spouses have a right to a specific, heterosexual and intimate interpersonal relationship that will establish and sustain the *consortium totius vitae*. The focus in jurisprudence is, therefore, on the quality of the interpersonal relationship. Alcoholism, to the extent that it undermines the capacity to enter responsibly into an intimate relationship, militates against the ability to give this *bonum* to the other. The Code itself assigns equal significance to the *bonum coniugum* and the *bonum prolis* (c. 1055). Both sustain and enrich the spouses as individuals

¹⁶GS, n. 49; FC, n. 19.

¹⁷See c. PINTO, 3 December 1982, p. 565-575. See also c. BRUNO, 16 December 1988, p. 750.

¹⁸See c. STANKIEWICZ, 20 April 1989, in *SRR Dec.*, 81 (1989), pp. 283-284. See also c. POMPEDDA, 19 October 1990, *ibid.*, 82 (1990), p. 690; c. BRUNO, 19 July 1991, p. 470.

¹⁹See c. BRUNO, 19 July 1991, p. 471.

²⁰C. BURKE, "The *bonum coniugum* and the *bonum prolis* : Ends or Properties of Marriage?" in *The Jurist*, 49 (1989), p. 704. He states that GS "no where says that marriage is ordered to the good of the spouses."

²¹MENDONÇA, "Consensual Incapacity for Marriage," p. 523.

²²E.G. PFNAUSCH, "The Good of the Spouses in Rotal Jurisprudence: New Horizons?" in *The Jurist*, 56 (1996), p. 542.

and in their common life.

4.1.3 - The *bonum prolis*

The interrelationship between the *bonum coniugum* and the *bonum prolis* finds its doctrinal foundation in the following quotations. *Gaudium et spes* at n. 50 states: "marriage and married love are by nature ordered to the procreation and education of offspring. Indeed, children are the supreme gift of marriage and they greatly contribute to the good of parents themselves."²³ *Familiaris consortio* at n. 11 states: "This totality which is required by conjugal love also corresponds to the demands of responsible fertility. This fertility is directed to the generation of a human being and so by its nature it surpasses the purely biological order and involves a whole series of personal values."²⁴ Although the interrelationship between the two *bona* is not directly enshrined in the law, it has frequently been observed, in marriage courts, that the exclusion of one often involves deterioration in the other. This should not be unexpected since both are integral to total conjugal donation.²⁵ The *bonum prolis*, in its essence, means the right and obligation to those acts apt for the generation and education of children.²⁶ It does not include the right to children. If children are born from the union, the parents have "the most serious duty and primary right to do all in their power to see to the

²³FLANNERY, *The Conciliar and Post Conciliar Documents*, p. 953.

²⁴FLANNERY, *More Postconciliar Documents*, pp. 822-823.

²⁵See T. MACKIN, "The Theology of Marriage in *Humanae vitae*," in *Thought*, 46 (1971), pp. 213-226. See also G. COLEMAN, "Marriage: The Vision of *Humanae vitae*," *ibid.*, 58 (1983), pp. 18-34.

²⁶DOYLE, "The Moral Inseparability of the Unitive and Procreative Aspects of Human Sexual Intercourse," p. 726. See also c. STANKIEWICZ, 13 May 1978, in *SRR Dec.*, 70 (1978), p. 298.

physical, social, cultural, moral and religious upbringing of their children” (c. 1136). While cultural differences in parenting techniques do exist, it would seem that the vulnerability of the child demands (in all societies) the capacity to provide physical and emotional nurturance and protection. If an individual is incapable of parenting, he/she cannot assume this obligation nor can the right be presented to the other party.²⁷ The abuse and irresponsibility that may accompany alcoholism introduce the question (as with the *bonum coniugum*) of capacity to assume responsibility for the *bonum prolis*.

4.1.4 - The *bonum fidei*

The Second Vatican Council expresses the significance of fidelity for the *bonum coniugum* and the *bonum prolis* with the following words: “The intimate union, as a mutual self-gift of two persons, and the good of children demand total fidelity from the spouses and require an unbreakable unity between them.”²⁸ This quotation captures the doctrinal *raison d’être* for fidelity within marriage. The law demands that, for validity, one have the capacity, at the time of consent, to present to the other and receive from the other the exclusive and perpetual right to conjugal acts performed in a human manner.²⁹ Although “unity” is a distinct property from the *bonum fidei*, the words “exclusive and perpetual” indirectly express the

²⁷See K.W. SCHMIDT, “*Educatio prolis* and the Validity of Marriage”, in *The Jurist*, 55 (1995), pp. 243-280. The author suggests, in this work, that the *educatio prolis* will become a more recognized juridic element within the *bonum prolis*. See also, HOLY SEE, “Charter of the Rights of the Family,” in *The Pope Speaks*, 29 (1984), pp. 78-86.

²⁸GS, n. 48: “Quae intima unio, utpote mutua duarum personarum donatio, sicut et bonum liberorum, plenam coniugum fidem exigunt atque indissolubilitatem eorumque unitatem urgent.”

²⁹See U. NAVARRETE, “De iure ad vitae communionem: observationes ad novum schema canonis 1086, §2,” in *Quaedam problemata actualia de matrimonio*, p. 194.

unity (one spouse) requirement of c. 1056. The person who, therefore, reserves the right to have more than one spouse and/or the right to commit adultery contracts invalidly.³⁰ In light of the fact that “the intimate union” (GS, n. 48) or the intimate interpersonal relationship is essential to the *consortium totius vitae*,³¹ the above explanation does not seem to exhaust the richness of the *bonum fidei*’s meaning. The *bonum fidei*, as one component in the complex of rights and obligations (the *consortium totius vitae*), seems to include the obligation of a perpetual commitment to and a dedication to the well-being of the other.³² Is this interpretation not suggested by Pope Pius XI?³³

The possibility that marital infidelity is associated with alcoholism is not alien to Rotal decisions.³⁴ The behavioral science literature does not identify marital infidelity as a specific diagnostic symptom. However, it does refer to irresponsibility, loss of internal control associated with intoxication and the deterioration in moral standards that accompanies prolonged alcoholism. The conclusion that alcoholism may render an individual incapable of

³⁰Ibid., p. 188. See also T.P. DOYLE, “A New Look at the *bonum fidei*,” in SC, 12 (1978), p. 10.

³¹See c. ANNÉ, 25 February 1969, pp. 182-184.

³²See BURKE, “The Object of the Marital Self-Gift as Presented in Canon 1057, §2,” p. 419.

³³See *Casti connubii*, n. 30: “These, then, are the elements which compose the blessing of conjugal faith: unity, chastity, charity, honourable noble obedience, which are at the same time an enumeration of the benefits which are bestowed on husband and wife in their married state, benefits by which the peace, the dignity and the happiness of matrimony are securely preserved and fostered.” English translation adapted from CARLEN, *The Papal Encyclicals, 1903-1939*, vol. 3, p. 395.

³⁴See c. BRUNO, 18 December 1986, in SRR Dec., 78 (1986), p. 757.

assuming responsibility for the *bonum fidei* is justified.

4.1.5 - The *bonum sacramenti*

Although the matrimonial *bona* are conceptually and juridically distinct, the Second Vatican Council emphasizes the interrelationship between them in a healthy marriage with the following words: “[. . .] an indissoluble covenant between two people and the good of the children demand that the mutual love of the partners be properly manifested, that it grow and mature.”³⁵ The *bonum sacramenti* provides the environment (time, security and commitment) within which the spouses and the children can mature spiritually and as human beings. The Church, therefore, in order to insure the ends of marriage naturally demands, for a valid covenant, the capacity to assume, at the time of consent, responsibility for this essential *bonum*. The significance of this *bonum* is further emphasized by the fact that an understanding of marriage that excludes indissolubility can vitiate consent (c. 1101, §2). This principle is grounded in the presumption that a person can will only what is known. Validity demands that knowledge content not be incompatible with the Christian view of marriage.³⁶

There is no identified direct relationship between alcoholism and an incapacity to assume responsibility for the *bonum sacramenti*. However, the irresponsibility and insecurity that usually accompanies alcoholism often results in separation and/or divorce.

³⁵FLANNERY, *The Conciliar and Post Conciliar Documents*, p. 954. See also U. NAVARRETE, *Structura iuridica matrimonii secundum Concilium Vaticanum II*, pp. 86-105.

³⁶See c. MASALA, 18 March 1970, in *SRR Dec.*, 62 (1970), p. 277. See also c. ANNÉ, 7 November 1972, *ibid.*, 64 (1972), p. 683; c. STANKIEWICZ, 23 July 1982, pp. 137-138.

4.1.6 - Sacramental dignity

The theological connection between the *bonum sacramenti* and sacramental dignity (reflected in c. 1055) is obvious from the fact that Christian marriage is said to image the inseparable covenant between Christ and the Church. Also, the endowment of Christian marriage with sacramental dignity ensures that the divine assistance necessary for perseverance will be available. This does not indicate that sacramentality cannot be juridically and conceptually distinct from the *bonum sacramenti*. The law itself implies that sacramentality is a distinct property or element in Christian marriage (cc. 1056, 1099).³⁷ Canon 1099 seems to confer, on sacramentality, a juridical relevance equal in status to that of the essential properties. In any event, the deliberate exclusion of sacramentality and error about sacramentality that determines the will both invalidate consent.³⁸ A party who deliberately excludes violates the right of the other to a valid sacramental marriage.

As with the *bonum sacramenti* a direct link has not been posited between alcoholism and incapacity to benefit from marriage as a sacrament. However, the lifestyle usually associated with alcoholism may, in some cases, be incompatible with benefit from sacramentality.

The formal object of consent is composed of a complex of rights and obligations.

³⁷See DE LUCA, "The New Law on Marriage," pp. 70-93.

³⁸ NAVARRETE, *Structura iuridica matrimonii secundum Concilium Vaticanum II*, p. 66. See also M. J. HIMES, "The Intrinsic Sacramentality of Marriage: The Theological Ground for the Inseparability of Validity and Sacramentality in Marriage," in *The Jurist*, 50 (1990), pp. 198-220; c. SERRANO, 1 June 1990, pp. 18-31; IDEM, 18 April 1986, in *SRR Dec.*, 78(1986), pp. 287-298.

Within this complex, the four *bona* have received the greatest attention from canonists. No doubt jurisprudence will continue to describe rights and obligations derived from marriage and its *bona*. It is easier to conceive of sacramentality as a right rather than an obligation.

Since marriage is a vocation (c. 226) and a unified state, it is logical that a theological basis for the interrelationship between the *bona* can be found in magisterial teaching (*GS*). According to canon law, Christian spouses have a right to the sacramentality of marriage (c. 213). The deliberate exclusion of sacramentality (as well as the other *bona*) by one spouse violates the right of the other and vitiates consent. According to c. 1095, 3°, consent is rendered invalid only when the essential obligations described above cannot be assumed due to a psychological cause.

4.2 - Causes of a psychological nature

During the preparation of the Code, various terms expressive of causes of an inability to assume were suggested.³⁹ The final choice of *ob causas naturae psychicae* was probably “a product of compromise”⁴⁰ and differences of opinion among authors regarding its exact meaning remain. For Örsy, the accurate translation of the phrase has significant implications for tribunal application.⁴¹ Both Pompedda⁴² and Navarrete⁴³ have suggested that reference

³⁹See *Communicationes*, 7 (1975), pp. 44-52. See also *ibid.*, 9 (1977), pp. 369-370.

⁴⁰D.E. FELLHAUER, “Canon 1095: Canonical Doctrine and Jurisprudence, Part II: Canon 1095, 3°,” in *CLSA Proceedings*, 48 (1986), p. 109.

⁴¹ÖRSY, “Matrimonial Consent in the New Code,” 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

to a cause is unnecessary since it is the inability to assume that is juridically significant and not the cause of the inability. Mendonça⁴⁴ and Ragni⁴⁵ claim that the phrase can legitimately be extended to include causes of a “physio-psychic” nature provided the immediate source of the incapacity is psychological in nature. Burke seems to insist that the proper interpretation is that “only a serious disorder or pathology of the human psyche can invalidate consent.”⁴⁶

The accuracy of these various opinions can be evaluated by reference to the teaching of John Paul II as expressed in his Rotal Allocution on 5 February 1987. He writes:

For the canonist the principle must remain clear that only *incapacity* and not *difficulty* in giving consent and in realizing a true community of life and love invalidates a marriage. Moreover, the breakdown of a marriage union is never in itself proof of such incapacity on the part of the contracting parties. They may have neglected or used badly the means, both natural and supernatural, at their disposal; or they may have failed to accept the inevitable limitations and burdens of married life, either because of blocks of an unconscious nature

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

⁴²POMPEDDA, “Incapacity for Marriage”, p. 197: “It would probably have been better, with all due respect to the Legislator, had the Legislator not mentioned a cause and left such a determination to jurisprudence and doctrine.”

⁴³U. NAVARRETE, “Incapacitas assumendi onera uti caput autonomum nullitatis matrimonii,” in *Periodica*, 61 (1972), pp. 67-72.

⁴⁴MENDONÇA, “Consensual Incapacity for Marriage,” p. 527.

⁴⁵c. RAGNI, 26 November 1985, in *SRR Dec.*, 77 (1985), p. 554: “canon 1095 speaks only of an incapacity of a psychic or physio-psychic (or psycho-physical) nature of the person.”

⁴⁶See c. BURKE, 18 July 1991, in *SC*, 26 (1992), p. 245.

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 of the individual to understand and/or to will.⁴⁷

This paragraph contains several concepts valuable for the judges' decision-making process. For the purposes of this discussion attention can be focused on two of the pope's directives. First, "only incapacity [...] invalidates a marriage." These words clearly indicate that it is the incapacity to assume of c. 1095, 3° and not the psychic defect that is endowed with juridic relevance. This point receives additional clarification in the final sentence of the paragraph where is it stated that "an anomaly of a serious nature is present, which, however it may be defined must substantially vitiate the capacity of the individual to understand and/or to will." The presence of the "anomaly" renders "the capacity ... to understand and/or to will" disproportionate to the formal object. It is, therefore, the disproportionality in the human act of consent that is of juridic relevance and not the "anomaly." Second, the words "however it may be defined" suggest that diagnosis, as such, has little significance. The effect of the anomaly is, however, the judge's arena of interest.

In brief, the choice of the general expression of *causas naturae psychicae* has stimulated discussions among and elaboration by canonists (Ragni; Mendonça). The 1987 Allocution has added specificity (not conclusion) to the discussion. This matter is of considerable importance for this study. It is clear, from the material presented in Chapters One and Two, that alcoholism can have both physical and psychological effects. The weight attached to these components may vary from individual to individual. It matters not which

⁴⁷See AAS, 79 (1987), p. 1457. English translation adapted from WOESTMAN, *Papal Allocutions to the Roman Rota 1939-1944*, p. 194.

component is the primary stimulant for abuse. Both behavioral scientists and canonists would agree that alcoholism can be categorized as a “psychic anomaly” with effects possibly counterproductive to the functions essential for the exercise of the capacity to assume obligations. Jurisprudential principles have been developed to facilitate the judge’s assessment of the impact of defects on capacity.

4.3 - Jurisprudential principles

Jurisprudential principles implied in c. 1095 can be understood as criteria utilized by the judge for the clarification and evaluation of evidence. Their purpose is to insure that judgments are rendered with justice and equity. The principles of severity, antecedence, perpetuity and relativity will be discussed in the following paragraphs.

4.3.1 - Severity

In the application of the severity principle, the judge is confronted with the difficult task of making a human judgment based on all the evidence in the case. In order to render an affirmative decision, the judge must be morally certain that something, grounded in the individual’s existence, made it morally impossible for him/her to assume essential obligations. The interconnection between the subject and the formal object becomes important, in the individual case. The formal object has objective obligations; however, individuals differ in capacity to cope with psychic disorders. Some individuals may be able to tolerate what would objectively be considered a serious psychic disorder and yet continue to fulfill obligations. For example, some individuals, characterized by Jellinek as *beta* and *delta* alcoholics (discussed in Chapter One), may continue for years with a relatively normal lifestyle. Nevertheless, the existence of such a serious disorder prior to and at the time of consent may

facilitate proof of incapacity.

4.3.2 - Antecedence

It is an accepted fact that antecedence was introduced by analogy into the discussion on incapacity to assume.⁴⁸ The legitimacy of this transfer of a criterion from impotence to incapacity is questionable. Incapacity and impotence are two different concepts. Furthermore, essential marital obligations are continuous, come into existence when consent is given and the capacity to assume them need only be present *instans temporis* when consent is expressed. As A. Mendonça states “antecedence of the incapacity strictly means that it be present at the moment of exchanging consent and not subsequently caused.”⁴⁹ If alcoholism, for example, emerges subsequent to consent, it cannot be argued that this disorder vitiated the human act such that consent, was inefficacious. The criterion of perpetuity was also associated with incapacity by analogy with impotence.

4.3.3 - Perpetuity

The same natural law principle grounds the invalidating force of both impotence and incapacity to assume. For this reason, some canonists have claimed that the incapacity to assume is invalidating only if it is perpetual.⁵⁰ Cormac Burke is a firm advocate for this view. He writes: “The subsequent cure seems to me to disprove the adequacy or reliability

⁴⁸See J.H. PROVOST, “Canon 1095: Past, Present, Future,” in *The Jurist*, 54 (1994), p. 100.

⁴⁹See MENDONÇA “Consensual Incapacity for Marriage,” p. 530. See also *c.* POMPEDDA, 19 October 1990, in *IE*, 4 (1992), pp. 158-159.

⁵⁰See *c.* PINTO, 20 February 1987, *ibid.*, 1 (1989), p. 573. See also *c.* DORAN, 1 July 1988, *ibid.*, 2(1990), p. 163.

of the diagnostic or other 'proof' of an authentic condition [. . .] at the time of marriage."⁵¹

In other words, if the condition is curable it could not have existed with force sufficient to vitiate the human act of consent. This position may violate the natural right to marry. For example, alcoholics themselves and clinicians recognize that some individuals remain incurable even after several years of sobriety. These same individuals, through recovery programs, may become quite mature and integrated as human beings. The application of the same criterion of incurability could deny them the right to marry or recourse would have to be sought in the position that their alcoholism did not and does not exist.

Other authors reject incurability as a criterion for a declaration of nullity.⁵² There are several reasons given for this rejection. First, the legislator insisted on the requirement of perpetuity with impotence but did not do so with incapacity to assume. Second, essential obligations do not admit of discontinuity and must be assumed from the moment of consent not when the incapacity is removed. Third, "curability," in this context, means removal through available, ordinary, licit means. Removal may be possible, because of resources, in some societies and not in others. Is the law not universally applicable? Fourth, professionals are highly reluctant to predict "curability" because of the complexity of the variables involved. The logical solution to the controversy may be to admit that impotence and incapacity to assume are distinct, that impotence is an impediment and c. 1095, 3^o deals with the moral order, and that justice and equity may demand that the same criteria not be applied to both.

⁵¹C. Burke, "Some Reflections on Canon 1095," in *ME*, 117 (1992), p. 145.

⁵²See c. FALTIN, 11 May 1987, in *DE*, 99/2 (1988), pp. 16-17. See also c. BRUNO, 19 July 1991, p. 171; c. POMPEDDA, 19 October 1990, p. 159.

It is difficult to determine, with certitude, the prevailing opinion of the Rota on this issue. In assessing the status of perpetuity, A. Mendonça states “it seems the majority of rotal authors support [Pinto’s] view” that perpetuity is an essential characteristic of incapacity to assume.⁵³ On the other hand, Bruno claims that “the consolidated jurisprudence of the Rota teaches that it is not at all necessary to insist on perpetual incapacity.”⁵⁴ Burke asserts that “there is a sizable body of jurisprudence which holds that incapacity must be perpetual or permanent; i.e., must not only be actually present at the moment of consent, but must offer no hope of remedy or cure by ordinary and licit means.”⁵⁵ In any event, these opposing views give rise to a doubt of law and doubtful laws do not bind (c. 14).⁵⁶ It seems reasonable to conclude that the contract is not valid if an individual is not able to assume perpetual obligations at the time of consent regardless of any subsequent level of capacity. Relative incapacity is also a controversial concept among canonists.

4.3.4 - Relative incapacity

The concept of relative incapacity, like the distinction between discretionary judgment and incapacity to assume,⁵⁷ was introduced several decades prior to the promulgation of the 1983 Code.⁵⁸ The basic argument for the acceptance of relative incapacity is derived from

⁵³MENDONÇA, “Consensual Incapacity for Marriage,” p. 532.

⁵⁴See c. BRUNO, 19 July 1991, p. 171.

⁵⁵BURKE, “Some Reflections on Canon 1095,” pp. 144-145.

⁵⁶See MENDONÇA “Consensual Incapacity for Marriage,” p. 534.

⁵⁷The first definitive distinction between the two *capita* may have originated with LEFEBVRE. See c. LEFEBVRE, 2 December 1967, in *SRR Dec.*, 59 (1967), pp. 798-807.

⁵⁸See S.J. KELLEHER, “Relative and Absolute Incapacity to Marry,” in *The Jurist*, 29

the nature of marriage as an intimate interpersonal relationship. If the relationship between the parties at the time of consent is such that an interpersonal relationship cannot emerge then the attempt to assume the rights and obligations⁵⁹ integral to the relationship is inefficacious. The acceptance/rejection of the concept of relative incapacity must be grounded in the interpretation of the law and the legislator's intended meaning for the law. The question, therefore, is: does c. 1095, 3° allow invalidity when the 'causes of a psychological nature' exist in the interpersonal relationship and not necessarily in the parties? The law does not explicitly state that the causes must exist in the subject but clearly implies a subjective locus. There are authors who argue that absolute incapacity, within the subject, is unnecessary.⁶⁰ Adjudication is always directed to a particular marriage and marriage only exists in particular couples.⁶¹ M. O'Dea's position is that " 'relative incapacity' and 'essential incompatibility' are inappropriate to designate grounds for nullity" and "the ground for nullity really should be incapacity of each to assume the essential obligations one with the other."⁶² This statement does not necessarily exclude the interpersonal psychopathology as a cause of mutual incapacity. If the intended emphasis is on "one with the other" both could be capable of

(1969), p. 326.

⁵⁹M. REINHARDT and G. ARELLA, "Essential Incompatibility as Grounds for Nullity of Marriage," in *The Catholic Lawyer*, 16 (1970), pp. 173-174.

⁶⁰ KELLEHER, "Relative and Absolute Incapacity to Marry," pp. 328-329.

⁶¹AHERN "Psychological Incapacity for Marriage," p. 249. See also R. BROWN, "Essential Incompatibility: Research and the Present Situation," in *SC*, 14 (1980), p. 44.

⁶²M. O'DEA, *The Effects of the Histrionic Personality Disorder on Marriage Consent*, Ottawa, Faculty of Canon Law, Saint Paul University, 1993, pp. 202-203. In a recent letter received from M. O'Dea (dated 98.11.17) he states: "I think your reading of my position is a fair interpretation... . The emphasis should indeed be 'one with the other'."

assuming essential obligations with someone else and both are rendered incapable of assuming because of the interaction between them. All would surely agree with O'Dea that incapacity to assume, and not the non-juridically relevant relative incapacity, must be the ground for nullity.

Canonists who support the concept of relative incapacity do so because impotence and incapacity are based in the natural law principle: *Nemo potest ad impossibile obligari*. Pinto⁶³ and Serrano⁶⁴ are representatives of this position. For Serrano, the interpersonal nature of marriage stressed in *Gaudium et spes*, necessarily introduces the concept of relative incapacity.⁶⁵ Mendonça also argues that "the nature of the pathology may be such that in certain cases it may give rise to what is called in psychology 'interpersonal psychopathology' which is the result of the combination of two persons personality deficiencies, which in canonical language is known as 'relative incapacity.' This is not uncommon in cases of personality disorders."⁶⁶ Mendonça summarizes his position as follows: "Only when real psychopathology and not merely character differences underlies such an incompatibility in a concrete situation, can we admit true 'relative incapacity' for assuming the essential

⁶³See c. PINTO, 27 May 1983, in *ME*, 110 (1985), p. 330.

⁶⁴See J. M. SERRANO, "La consideración existencial del matrimonio en las Causas canónicas de nulidad por incapacidad psíquica," in *Angelicum*, 68 (1991), pp. 188-191.

⁶⁵See G. LESAGE, "Relative Incapacity and Invalidity of Marriage," in *CLSA Proceedings*, 1979, p. 77.

⁶⁶A. MENDONÇA, "Narcissistic Personality Disorder: Its Effects on Matrimonial Consent," in *SC*, 27 (1993), p. 126. MENDONÇA implies, in this quotation, that the pathology of both parties intensifies the dysfunctionality of the interpersonal relationship to intolerable limits.

obligations of marriage.”⁶⁷

The majority of Rotal auditors reject the legal viability of the concept of relative incapacity. Pompedda seems to admit that there is a doubt of law regarding relative incapacity;⁶⁸ however, he is convinced that the concept has no juridic basis in the 1983 Code, that “the Rotal *praxis* does not admit of a relative incapacity normally” and that “a methodological purity is lacking” in the positions advanced by Serrano and Pinto.⁶⁹ Burke objects to the relative incapacity on the basis of the meaning and incorrect use of interpersonality. He writes:

I find no solid basis in law, or in Christian theology or anthropology, to justify this theory. Consensual incapacity is incapacity relative to the objective rights/ obligations of marriage in their juridic essence. It is incapacity regarding marriage considered essentially, in itself; not existential insofar as it concerns the concrete partner chosen. Consensual incapacity relates to marriage, not to spouse. The incapacity is person-to-institution, not person-to-person.⁷⁰

Mendonça’s response to Burke’s view, on the other hand, stresses the significance of the interpersonal relationship for the *communitas vitae*. He says:

This view, in my opinion, seems quite intransigent as it fails to appreciate the depth of the marital relationship especially in the aspect of interpersonal relationship (union of two sexually distinct persons) and the perpetual and exclusive nature of its essential rights and obligations. Marriage is first and foremost a personal relationship in its natural foundation before it is institutional. In any juridical analysis of marriage both personal and social (institutional) aspects must be considered together. Such a holistic approach

⁶⁷ MENDONÇA, “Consensual Incapacity for Marriage,” p. 540.

⁶⁸See *c.* POMPEDDA, 19 October 1990, p. 161.

⁶⁹POMPEDDA, “Incapacity to Assume” p. 206.

⁷⁰BURKE, “Some Reflections on Canon 1095,” p. 142.

does not do any injustice either to the institutional or to the interpersonal aspects of the reality of marriage.⁷¹

In fact, a difference in emphasis on the role that the interpersonal relationship plays in the *bonum coniugum* of marriage may be one reason for differences of opinion among canonists regarding the significance of relative incapacity.

The resolution of the issue may have to await a more comprehensive understanding of interpersonal dynamics and interpersonal relationships. Both canonists and behavioral scientists would undoubtedly agree that the phenomenon of a dysfunctional relationship is a reality. In such a relationship, there is a high probability that one or both parties possess some psychopathology. However, it is also conceivable that the behavior of one party stimulates the behavior of the other in such a manner that both display a nonproductive and self-defeating behavioural pattern. For example, an individual may have adopted the victim/nurturer role in order to glean feelings of self-worth. The partner receives subtle cues to be dependent and “act out” (abuse alcohol) so that his/her mate can have the opportunity to bolster feelings of self-worth by playing the role of the nurturer/victim. A mutual behavioral pattern is reinforced and becomes habitual. Both parties are enablers for each other and both can be classified as codependent. The behavior of one stimulates and makes present pathological behavior in the other. With other partners, who would refuse to be enablers, neither party would be reinforced and both could be given the opportunity for self-actualization.

The above scenario is not uncommon. The dependency, depression and emotional

⁷¹MENDONÇA, “Consensual Incapacity for Marriage,” p. 538.

immaturity of the alcoholic is clinically well established (see Chapter Two). Also, females who spend their developmental years in families centered around alcohol tend to play out the nurturer/victim role in their marriages. The jurisprudential question is: were these two individuals at the time of consent incapable, due to psychological causes, of assuming the essential obligations of marriage (especially the *bonum coniugum* and the *bonum prolis*) with each other? Judges aware that marriage is a vocation within which individuals, with divine assistance, are meant to develop spiritually and emotionally and aware that decisions must be rendered with justice and equity will give due consideration to this question.

To summarize, the application of the jurisprudential principles of antecedence, severity, perpetuity and relative incapacity to the adjudication of nullity cases is meant to ensure that decisions are rendered with equity and justice. In the application of c. 1095, 3°, as a ground, the judge must determine whether or not the parties were psychologically capable of assuming rights and obligations constitutive of the *consortium totius vitae*. These rights and obligations include the four *bona*. For Christians, sacramental dignity is also an essential right. The sacred and behavioral sciences have facilitated each other's understanding of psychological capacity and its impact on the human act of consent required for assuming the essential obligations of marriage. Alcoholism can interfere with psychological capacity for establishing an intimate interpersonal relationship.

4.4 - The alcoholic's incapacity for essential marital obligations

Although marital obligations are multiple, the emphasis is necessarily on the word "essential". The law uses this adjective, and jurisprudence, in view of the individual's right to marry, must insist only on essential obligations. A comprehensive understanding of what

is essential awaits research and jurisprudential development. The present question is: is the alcoholic incapable of assuming the essential marital obligations?

4.4.1 - The alcoholic's incapacity for the *bonum coniugum*

As stated earlier, c. 1055, §1 invests the *bonum coniugum* with juridical significance. According to Pompedda “the rights and obligations [of marriage are] associated with a unique or specific way of acting in interpersonal relationships proper to spouses,...”.⁷² This quotation suggests that the interpersonal relationship is one significant constitutive element of the *bonum coniugum*. Since marriage is a vocation (c. 226, §1) and a specific means of salvation, the importance of the capacity to enter an intimate interpersonal relationship is obvious.⁷³ It would be inaccurate to assume that every diagnosed alcoholic is automatically excluded from marriage on the basis of an inability to establish an intimate interpersonal relationship. Canon 1058 affirms that “all can contract marriage who are not prohibited by law.” Canon 1095, 3° prohibits, from marriage, alcoholics who are unable to assume essential obligations. The incapacity to assume, therefore, (and not alcoholism itself) carries juridic weight. Nevertheless, the non-alcoholic spouse has a right to a unique interpersonal relationship. If the alcoholic partner cannot respect this right and fulfill the corresponding obligation, he/she is incapable of the contract. When is an alcoholic unable to assume this obligation? The answer to this question would be less difficult if the law provided specific and quantitatively measurable criteria. In the final analysis, the judge must be morally certain

⁷²c. POMPEDDA, 11 April 1988, p. 202.

⁷³WEIST, *Alcoholism and Marriage*, pp. 72-80. In this section of his doctoral dissertation, Weist discusses the possibility that the chronic alcoholic may not be capable of assuming the obligation to provide for a community of life and love.

that the party's psychological state is incompatible with the assumption of this obligation.

Chapter Two contains data that may facilitate the judge's decision-making process. It seems reasonable to conclude that the capacity to assume the obligation of an intimate interpersonal relationship would require that a candidate possess proportionate cognitive and affective maturity.

In the cognitive area the crucial question would appear to be the level of deterioration that has occurred as a result of alcohol abuse. For the judge it matters not whether field dependency, an external locus of control and the overestimation of painful stimuli preceded or resulted from alcohol abuse. However, significant levels of these cognitive/perceptual style indicators may cause the judge to question the adequacy of a party's cognitive functioning. In addition, if there is evidence of damage (due to alcohol abuse) to the neurotransmitter systems of the CNS, attention, memory and thinking capacity are impaired. If an individual cannot attend, remember and think, he/she cannot learn from experience. The continuous fulfillment of marital obligations is surely a process that involves learning from experience. At the moment of consent the individual must have the capacity to assume and fulfill perpetual obligations. The fulfillment of obligations presupposes some manageability in one's life. The alcoholic is portrayed as life's victim (*PD* scale on *MMPI*) rather than as the one who is master of his/her actions. The alcoholic's life is said to be "unmanageable".⁷⁴ Likewise, alcohol abuse may interfere with cognitive processes to the extent that Bandura's posited constructs *forethought capacity* and *self-efficacy evaluation* are non-existent. It is reasonable

⁷⁴*Twelve Steps and Twelve Traditions*, p. 21.

to presuppose that the capacity to assume essential marital obligations involves some ability to predict the consequences of actions (*forethought capacity*) and some ability to assess, with accuracy, one's own (*self-efficacy evaluations*) and the other's abilities. These cognitive abilities interact with affective functioning to determine behavioural patterns.

Affective capacity or the ability to experience, communicate and express emotion, with honesty, also impacts on the development of an intimate interpersonal relationship. It will be recalled from Chapter Two that the alcoholic experiences negative rather than positive affect. He/she may initially consume alcohol to enhance positive affect. Alcohol is, however, a depressant and its abuse (for most individuals) eventually results in a relatively permanent negative affective state. It is not surprising, therefore, that the alcoholic has elevated scores on the sub-scales of the *MMPI* (*Pd, D, Pt*) that measure negative affect. The alcoholic feels victimized, alienated, depressed, unhappy, anxious and fearful.⁷⁵ He/she has low self-esteem, is unpredictable, is self-absorbed, cannot profit from experience and cannot develop strong loyalties. These observations can be summarized by stating that the alcoholic presents as arrested in emotional development.⁷⁶ Social interaction is not experienced as rewarding and, therefore, interactions that would promote emotional development are limited or cease to exist. For the judge the question may well be: when is the lack of emotional maturity incompatible with the assumption of the obligation to enter into an intimate interpersonal

⁷⁵CARSON, "Interpretation Manual to the *MMPI*," pp. 279-285. See also BUTCHER, *The MMPI-2 in Psychological Treatment*, pp. 35-36.

⁷⁶The AA literature describes the alcoholic's emotional immaturity. Alcoholism, when present, obstructs emotional development. See *Alcoholics Anonymous*, pp. 62, 64. See also c. CIVILI, 22 November 1994, p. 570.

relationship?

The level of affective development associated with Jellinek's *crucial* and *chronic* phases, *gamma alcoholism*, the *Wernike-Korsakoff Syndrome*, *alcohol dementia*, *alcohol paresis* and *alcohol paranoia* may be such that there is an obvious incompatibility between emotional maturity and capacity to enter into an intimate interpersonal relationship. When involvement with alcohol is less serious, the incompatibility may be less obvious.

The balance between social skills (discussed in Chapter Two) basic to a healthy intimate marital relationship is dependent upon adequate cognitive and affective functioning. This is so because social skill development relies on the accurate perception and processing of external and internal stimuli and on emotional control. The alcoholic's impaired social skills development, as identified by elevated scores on the *Pd*, *Pt*, and *D* scales of the *MMPI*, place him/her at a disadvantage for establishing an intimate interpersonal relationship.

In addition, negative emotions⁷⁷ (anger, sadness, fear, anxiety, and depression), low self-esteem⁷⁸ and fear of intimacy⁷⁹ render the alcoholic vulnerable to passionate love⁸⁰ and less likely to develop the inner discipline required for the commitment, attachment and intimacy involved in companionate love.⁸¹

⁷⁷FISCHER, SHAVER and CARNOCHAN, "How Emotions Develop and How They Organize Development," pp. 81-127. See also CARSON, "Interpretation Manual to the *MMPI*," p. 279.

⁷⁸BARTHOLOMEW and HOROWITZ, "Attachment Styles in Young Adults: A Test of a Four-Category Model," pp. 226-244.

⁷⁹*Ibid.*

⁸⁰HATFIELD and RAPSON, *Love, Sex and Intimacy*, p. 5.

⁸¹*Ibid.*, p. 9.

While these behavioral science research discoveries do not allow for the conclusion that the alcoholic is definitively incapable of assuming responsibility for an interpersonal marital relationship, they do provide the judge with a framework within which he can judge the severity of the incapacity. Observations recorded in the *Acta* may correlate with these discoveries and thus facilitate an arrival at moral certitude. It is perhaps obvious that the quality of the marital interpersonal relationship has consequences for the *bonum prolis*.

4.4.2 - The alcoholic's incapacity for the *bonum prolis*

The obligation to provide for the *bonum prolis* involves the capacity to relate sexually in a human manner and the capacity to parent (c. 1136).⁸² Sexuality (within marriage) is integrated with and presupposes the relationship capacity discussed in the foregoing section. Both the *bonum coniugum* and the *bonum prolis* provide opportunities to the married partners for maturation and spiritual development.

The *bonum prolis* demands at least sufficient cognitive ability to understand the parenting role and sufficient affective ability to implement it. This means being emotionally present to and for children and the creation of a predictable and secure environment in which children can progress through the developmental stages in the absence of debilitating stress. Research on children who spend their developmental years with an alcoholic parent and research on adult children of alcoholics present serious questions regarding the alcoholic's capacity to parent. The modelling of the alcoholic parent is obviously inadequate and the

⁸²WEIST, *Alcoholism and Marriage*, pp. 57-72. Weist claims that the alcoholic may be incapable of assuming the obligation to educate children.

process of identification is, therefore, impaired. The alcohol abuse,⁸³ behavioural problems,⁸⁴ and academic difficulties⁸⁵ of children and adolescents from alcoholic homes all may give witness to the disorganization and neglect characteristic of families centered around alcohol. In addition, children of alcoholics adopt inflexible roles in the service of emotional survival and are, therefore, often ill equipped to meet the demands of later adult adjustment.⁸⁶

Jurisprudence has not placed significant emphasis on the alcoholic or the non-alcoholic individual's inability to parent as a ground for incapacity to assume essential obligations. This may well be largely due to the fact that the right to conjugal acts apt for the generation of children has taken center stage in canonical explanations of the *bonum prolis*. Also, children, with their rights, come into existence only subsequent to marital consent. Cultural differences in parenting standards may present enormous difficulties to a universal law that wishes to incorporate inappropriate parenting as a ground for nullity. Nevertheless, a judge could combine evidence of irresponsible behavior, on the part of one who abuses alcohol, prior to consent, with evidence of parental neglect of children subsequent to consent and arrive at moral certitude regarding the inability to assume this essential obligation. While there is a direct relationship between the *bonum coniugum* and the *bonum fidei*, the relationship

⁸³BARNES, FARREL and CAIRNS, "Parental Socialization Factors and Adolescent Drinking Behaviors," pp. 27-36.

⁸⁴EARLS et al., "Psychopathology in Children of Alcoholic and Antisocial Parents," pp. 481-487. See also REICH et al., "Psychopathology in Children of Alcoholics," pp. 995-1002.

⁸⁵KNOP et al., "A Prospective Study of Young Men at High Risk for Alcoholism: School Behavior and Achievement," pp. 273-278.

⁸⁶BROWN, *Treating Adult Children of Alcoholics*, p. 19.

between the *bonum prolis* and the *bonum fidei* may be more subtle and indirect.

4.4.3 - The alcoholic's incapacity for the *bonum fidei*

As stated earlier, the *bonum fidei* includes both unity and fidelity. *Gaudium et spes* at n. 48 stresses the significance of the *bonum fidei* for a healthy marriage. Exclusivity and fidelity in sexual matters are associated with the commitment and security necessary for the maturation of both the marital partners and the children. It cannot be stated that alcoholism, as such, causes infidelity or a lack of unity. However, the moral deterioration, loss of internal control, absences from the family, disorganization and irresponsibility that accompanies alcoholism inevitably result in family turmoil and spousal conflict. The alcoholic may then seek solace and fulfillment in other relationships. Also, the material presented in Chapters One and Two suggests that the alcoholic tends to deny, rationalize and blame others for his/her irresponsible behavior. Since others are responsible for the alcoholic's unhappiness, he/she may begin to believe that infidelity and extramarital affairs are justified and a means of punishing an unappreciative spouse.

In a specific case, evidence of infidelity associated with alcohol abuse prior to and subsequent to marital consent may provide the judge with the necessary moral certitude regarding incapacity to assume this essential obligation. In *Gaudium et spes* (n. 48), the *bonum coniugum*, *bonum fidei* and *bonum sacramenti* are doctrinally interdependent and interrelated.

4.4.4 - The alcoholic's incapacity for the *bonum sacramenti*

Indissolubility also provides the marriage partners with the necessary security, permanence and opportunities for continuous and renewed commitment. Again, when alcohol

is the main focus in a person's life, alcohol and not the partner becomes the object of love. The altruism, self-sacrifice, control, responsibility, continuity and stability necessary to sustain a commitment are not compatible with the alcohol abuser's lifestyle. As alcohol takes possession of an individual, the spouse may experience more and more financial stress and relationship conflict. The spouse for his/her own welfare and for the welfare of the children may be forced to resort to separation and divorce. If alcohol abuse exists, during the courtship, pastors may prudently advise treatment prior to marriage and the parties should be convinced that a level of personality integration, compatible with the obligation of the *bonum sacramenti*, has been achieved.⁸⁷

The *bonum sacramenti* together with the other three *bona* constitutes the essence of the formal object of consent. There are a number of Rotal sentences wherein it has been determined that the incapacity to assume the essential obligations was due to alcoholism.

4.5 - Rotal jurisprudence

Rotal jurisprudence, involving cases of alcoholism, has not usually focused on the incapacity to assume obligations intrinsic to specific *bona*. Rather, Rotal auditors have studied the incompatibility between alcoholism and the capacity to assume the complex of essential obligations. There are some exceptions in the following sentences.

4.5.1 - Decision *coram* DE LANVERSIN, 19 November 1983

This case received an affirmative decision at first instance in Roermond, Holland, on 11 May 1976. The grounds were unclear but appear to have been the petitioner's relative

⁸⁷ WRENN, *Annulments*, 1996, p.88.

incapacity⁸⁸ and the respondent's absolute incapacity to fulfill the essential marital obligations.⁸⁹ The case was reported to the Signatura and the Signatura, submitted it to the Rota where it received a negative decision on 15 November 1980. The third instance Rotal decision before De Lanversin, was affirmative on the basis of the respondent's lack of discretionary judgment due to alcoholism.

De Lanversin's sentence emphasizes several points relevant to this study. First, the incapacity to enter into an interpersonal relationship renders the will to marry inefficacious.⁹⁰ Second, chronic alcoholism (a habitual psychic condition as distinct from acute intoxication) results in permanent psychological and physical changes. These changes can have a negative impact on cognitive functioning (judgment, memory, perception), affective functioning and motivational functioning (activities of the will). In addition, the individual affected may become egocentric, experience mood fluctuations and a weakened sense of morality and responsibility.⁹¹ The severity of the changes, due to chronic alcoholism can be assessed by

⁸⁸Ibid., p. 89. Wrenn discusses the possible significance of relative incapacity for cases involving alcoholism.

⁸⁹c. DE LANVERSIN, 19 November 1983, in *SRR Dec.*, 75 (1983), p. 634: "Incapacità relativa nella donna ad arrivare ancora partendo da un inizio senza amore, ad un vero amore ed una vera formazione di coppia; incapacità probabiliter assoluta presso l'uomo per costruire una comunità maritale o di realizzare le essenziali responsabilità inde profluenti."

⁹⁰Ibid., p. 635: "Cum vero iste contractus nequeat promittere id cuius potestatem non habet, eiusdem voluntas matrimonialis fit inanis atque inefficax ob illam praeliminarem consensus incapacitatem, quae impedit quominus adsumantur coniugales obligationes, atque in specie ipsam possibilitatem relationis s.d. 'interpersonalis' aufert inter subjecta foederis matrimonialis."

⁹¹Ibid., p. 636.

utilizing Jellinek's typology (Chapter One), and Sabattani's criteria.⁹² Third, De Lanversin insists that expert opinion should be used to determine the alcoholic's incapacity judged under c. 1095, 2° or 3°.⁹³

The medical expert determined, in this case, that the respondent was suffering from chronic alcoholism in Jellinek's *critical* phase.⁹⁴ The court concluded from the facts of the case that the respondent lacked the internal freedom required for the accurate assessment of marital obligations.

De Lanversin does not automatically conclude that chronic alcoholism excludes consensual capacity. Rather he integrates expert opinion with the facts of this individual case reported in the *Acta*. He then concludes that there is evidence of deterioration in the areas of functioning (cognitive, affective, motivational) required for the human act of consent. A disproportionality exists, therefore, between the respondent's level of functioning and the capacity required to exercise informed consent. Although this case was judged at third instance on lack of discretionary judgment, it is clear from the content of the sentence that the issue could have been joined on the basis of incapacity to assume. De Lanversin places substantial emphasis on the psychological integration required for the assumption of the

⁹²c. SABATTANI, 24 February 1961, pp. 124-125. See 3.4.1.1 above.

⁹³ DE LANVERSIN, 19 November 1983, p. 639: "Insaniam quoque pertractant periti, nam in causis pertinentibus tum ad defectum consensus ob defectum discretionis iudicii, tum ad incapacitatem assumendi onera coniugalia ob causas psychicas, requiritur suffragium peritorum qui infirmum, si casus ferat, eiusque acta, quae mentis anomaliae suspicionem inferunt, examinent secundum artis praecepta."

⁹⁴ DE LANVERSIN erroneously equates the *crucial* phase of alcoholism with Jellinek's *gamma* alcoholism.

obligation to enter an interpersonal relationship.

4.5.2 - Decision *coram* PINTO, 30 May 1986

This case was heard, at first instance, before the tribunal of Hexham and Newcastle on 2 November 1983. The grounds were lack of discretionary judgment and incapacity to assume and fulfill the essential marital obligations on the part of the respondent. It received a negative decision on both grounds. The Liverpool appeal tribunal, on 3 October 1984, rendered a negative decision on lack of discretionary judgment and an affirmative on incapacity to assume. Since there were two conforming decisions on lack of discretionary judgment, the case was heard before Pinto on the ground of incapacity to assume.⁹⁵

The Apostolic Signatura refused permission for the case to be tried, at third instance, before the Liverpool tribunal and referred the case to the Rota. Before it was studied by the Rota, the *Acta* were sanated by a rescript of 3 May 1985. Sanation was necessary because a notary did not intervene and because the defender of the bond may not have been properly cited. The *in iure* section of this sentence contains four relevant topics: juridic principles, an explanation of the *bonum coniugum*, an overview of the disorders of alcoholism and gambling, and a reference to available treatments for these disorders.

Pinto systematically and sequentially outlines the juridic principles that should guide the decision-making process. These principles are: a) essential obligations are unity, indissolubility and those resulting from the *bonum coniugum* and the *bonum prolis*; b) if it is physically or morally impossible to fulfill obligations, they cannot be assumed; c) the

⁹⁵c. PINTO, 30 May 1986, in *ME*, 111 (1986), pp. 389-396.

incapacity must be grounded in a cause of a psychic nature and not an anatomical or physiological cause;⁹⁶ d) incapacity must exist at the moment of consent; e) an incapacity that can be remedied through lawful means and in reasonable time does not incapacitate.⁹⁷

Pinto gives special attention to the *bonum coniugum*. Basing his comments on *Gaudium et spes*, n. 48 and on c. 1055, §1, he states that marriage essentially consists in the partnership of conjugal life which, in turn, requires an integration of persons and activities resulting in the *bonum coniugum*.⁹⁸

Since the psychic causes of the respondent's alleged incapacity are alcoholism and gambling, an overview of these disorders is presented utilizing the *DSM-III* and other reliable sources.⁹⁹ The treatments suggested for alcoholism are: psychotherapy (individual or family), medication, and attendance at Alcoholics Anonymous. For gambling, recommended interventions are: attendance at Gamblers Anonymous, segregation from a gambling environment and insight-oriented psychotherapy.¹⁰⁰

⁹⁶As stated in Chapter Three, Ragni claims that discretionary judgment disproportionate to marital consent can result from "physical and psychic or psycho-physical" causes. See *c. RAGNI*, 26 November 1985, p. 549. See also MENDONÇA, "Consensual Incapacity for Marriage," p. 482.

⁹⁷*c. PINTO*, 30 May 1986, p. 390.

⁹⁸*Ibid.*: "*Bonum coniugum* complectitur obligationes illas sine quibus est saltem moraliter impossibilis intima personarum atque operum coniunctio, qua coniuges adiutorium et servitium mutuo sibi praestant, et ad quam coniugium ex natura sua ordinatur etiam. Cfr. Conciliare Decretum *Gaudium et Spes*, n. 48. Hac personarum operumque integratione graviter deficiente, impossibilis fit vitae communio seu consortium vitae coniugalitatis in quo matrimonium essentialiter consistit (Cfr. Can. 1055 §1)."

⁹⁹*Ibid.*, pp. 390-391.

¹⁰⁰*Ibid.*

In the *in facto* section, Pinto evaluates the juridic relevance of the observations recorded in the testimonies and then refutes the arguments presented by the advocate at second instance. The negative decision, in this case, is important because it appears to be grounded first in the perception that the disorders are curable (by ordinary means and in reasonable time) and, therefore, not invalidating, and second, in the fact that the disorders became severe and destructive of the interpersonal relationship only after consent and as a result of marital responsibilities.¹⁰¹

The conclusion to this case focuses attention again on the issues of perpetuity of disorders and the need for expert opinion. If a disorder, in existence at the time of consent, is such that it is incompatible with a human act of consent, its curability is surely irrelevant. An invalid consent cannot be retroactively validated by the later remediation of a severe disorder. The services of an expert were not utilized in this case. The respondent was admittedly violent and abusive, had a sense of entitlement, needed to escape from obligations, was abusive of alcohol and gambled, was irresponsible, was jealous of his children, and was emotionally labile and remorseful. The relationship between these behaviors and inadequate emotional development should not be ignored. A thorough examination, by an expert, of the respondent's pre and post consent behavioral pattern would possibly have revealed a level of personality integration incompatible with the capacity to assume essential obligations.

4.5.3 - Decision *coram* BRUNO, 18 December 1986

In this case, the issues were joined on the basis of "the psychological incapacity of

¹⁰¹Ibid., pp. 394-395.

both parties and especially on account of the alcoholism of the woman [respondent] and the peculiar personality of the man [petitioner].”¹⁰² An affirmative decision was rendered at first instance in Portland, Oregon, on 20 December 1979 and a negative decision was given at the Rota on 19 February 1981 at second instance. The Rotal judges, after a comprehensive examination, did not find evidence for incapacity in either the petitioner or the respondent.

Bruno introduces the *in iure* section with a brief description of the functioning of the intellect and the will in the formation of the act of consent. He emphasizes the fact that the required critical ability (*critica facultas*) includes the capacity to assess one’s own physical and psychological capacity to assume and fulfill marital obligations.¹⁰³ He concludes this introductory section with: “Whatever, therefore, impedes the necessary intellectual knowledge or constricts the free determination, whether it comes about from psychotic or psychopathic illness or from a serious personality disorder renders matrimonial consent invalid.”¹⁰⁴ He then distinguishes, like many other authors, between acute and chronic alcoholism. In cases of acute alcoholism, “the degree of intoxication” must be determined in order to judge whether or not “sufficient light of intellect and force of will remained.”¹⁰⁵ In

¹⁰²c. BRUNO, 18 December 1986, p. 756: “. . . ex capite psychologicae incapacitatis utriusque coniugis, et quidem ob mulieris alcoholismum et peculiarem personalitatem viri.”

¹⁰³Ibid.: “. . . relate tum ad suam physicam tum ad psychicam capacitatem officia assumendi atque implemendi.”

¹⁰⁴Ibid.: “Quidquid ideo necessariam intellectus scientiam praepedit vel liberam determinationem coarctat, seve de morbo psychotico aut psychopatico aut de gravi deordinata personalitate agatur coniugalem consensum irritum facit.”

¹⁰⁵Ibid., p. 757.

his extensive discussion of chronic alcoholism, Bruno expresses several significant opinions.¹⁰⁶

First, chronic alcoholism is more serious than acute alcoholism because of its impact on “volition”. Second, repeated alcohol abuse damages the CNS and, therefore, there are “disturbances in the exercise of the mental faculties” dependent “upon the damaged parts of the brain.” Third, the disease is not inherited, “although sometimes neuropsychological and mental disorientation is transmitted to the descendants.” Bruno does not comment on the mechanism for transmission. The presumption is that he is referring to “the fetal alcohol syndrome”. He then admits that “the children of alcoholics may experience a propensity toward drinking alcohol and feel the power of alcohol in a peculiar way; nevertheless, if they apply the necessary precautions and are not forced to live in especially difficult circumstances, they can easily avoid the plague of alcoholism.”¹⁰⁷ In this statement, Bruno is alluding to the possibility of a genetic vulnerability as well as to the possibility of environmental causative factors. Fourth, Bruno concludes that the psychological studies undertaken in various countries concerning the personality of the drinker allow for the conclusion “that these subjects always display moral weakness, weak character, frequent imbalance, social maladjustment, sexual problems, and very often a state of mental weakness.”¹⁰⁸ Individual

¹⁰⁶Ibid., pp. 757-759.

¹⁰⁷Ibid., p. 758: “Quamvis ideo filii alcoholistarum propensionem ad alcoholicas potationes experiantur et peculiari modo vim alcoholi percipiant, tamen, si necessarias cautiones adhibent et in peculiaribus arduis adiunctis degere non cogantur, facile plagam alcoholismi vitare queunt.”

¹⁰⁸Ibid.: “... que ces sujets présentent toujours de la faiblesse morale, peu de caractère, souvent de déséquilibre, de l’inadaptabilité sociale, des troubles de la sexualité et très souvent un état psychasthénique ...”.

differences are such that it would be difficult, if not impossible, to verify such a strong statement. Fifth, Bruno refers to Sabattani's legal criteria (listed at Section 3.4.1.1 above) as "presumptions and information insufficient for proof" because it must be established from "the facts . . . that the subject's faculties of cognition and volition have been severely damaged already at the time of the marriage."¹⁰⁹ He also states that "it must not be forgotten that alcoholism cannot influence consent in matrimony, unless before the wedding it has already reached a severe stage in the person about to get married." The implication is that only severe chronic alcoholism possibly invalidates. However, "severity" is not necessarily equivalent in the psychophysical and canonical spheres. The impact of alcohol abuse on the faculties, presumed to be operative in the formation of the human act of consent, must be assessed and not necessarily the actual damage to those faculties or the severity of the disorder itself. It is, therefore, not necessarily the severity of the disorder but the effects of the disorder that are significant.

Sixth, Bruno believes that "If, however, a sure diagnosis of chronic alcoholism is pronounced officially at the time of the wedding [although presently in remission] ... it can be concluded with moral certainty in favour of nullity, because in making the agreement... the subject was incapable of assuming and fulfilling the obligations of conjugal life."¹¹⁰ This statement is acceptable only within the context of Bruno's description of chronic alcoholism.

¹⁰⁹Ibid., p. 759

¹¹⁰Ibid. : "Attamen si habetur diagnosis certa alcoholismi chronici relate ad tempus nuptiarum...morali cum certitudine concludi potest pro matrimonii nullitate, quia contrahens...incapax erat assumendi et adimplendi onera coniugalia."

He describes the very advanced stages of chronic alcoholism. However, an individual may be a chronic alcoholic or be totally alcohol dependent for several years before very severe symptoms are manifest. It cannot be concluded and must be proven that one who suffers from alcohol dependency is incapable of assuming and fulfilling the obligations of conjugal life. It is not the disorder itself but its impact that determines incapacity. Since official diagnoses are fallible and since individuals differ in symptom manifestation, it would be precarious to accept a diagnosis, in itself, as either a necessary or sufficient criterion for moral certitude.

This decision reflects a careful evaluation of observations recorded in the testimonies in terms of their juridic value. The *ponens* readily admits that alcoholism emerged subsequent to marital consent. However, a predisposition to alcoholism and its post consent emergence do not establish proof for incapacity at the time of consent. In addition, the *ponens* provides reasons for his rejection of the expert's opinions given for the second instance hearing. These opinions were not grounded in and could not be logically deduced from the recorded observations of the witnesses.

4.5.4 - Decision *coram* DE LANVERSIN, 1 March 1989

The issue was joined in this case on the basis of c. 1095, 3° on the part of both spouses. The respondent's psychic cause was reportedly chronic alcoholism. A psychiatric evaluation of the respondent was obtained and a curator was appointed for both parties. On 8 July 1985, the first instance tribunal rendered an affirmative decision on the petitioner and a negative on the respondent. The defender of the bond appealed the decision and after the depositions of two new witnesses were taken, the appeal court, on 26 February 1987, gave

a negative decision on both parties. The petitioner appealed this second instance decision to the Rota. The Rota *ex-officio* appointed curators for both parties, used the inability to assume on the part of the petitioner as a ground, obtained an additional expert's report and received submissions from the advocate and the defender of the bond. The Rota decreed a postponement on 14 December 1988, obtained a second report from the appointed expert and a supplementary report from the advocate. Then, on 1 March 1989 it responded with an affirmative decision.¹¹¹

In the *in iure* section of his sentence De Lanversin discusses essential marital obligations (the formal object of consent), juridic principles, a justification for the use of c. 1095, 3° in cases of alcoholism, the nature of alcoholism and the need for expert opinion. De Lanversin admits that it is not easy to differentiate between the essential and non-essential elements of the communion of life.¹¹² In any event, he appears to equate communion of life with the marital partnership and he states that the good of the spouses (an essential element of the partnership) necessarily involves the interpersonal integration of the intrapersonal lives (intellectual, affective, volitive and sexual aspects) of the spouses.¹¹³ The communion of life

¹¹¹c. DE LANVERSIN, 1 March 1989, in *SRR Dec.*, 81 (1989), pp. 176-178.

¹¹²*Ibid.*, p. 178.

¹¹³*Ibid.*: "Profecto heic agitur de totius vitae consortio, sub adpectu boni coniugum (cf. Can. 1055, § 1 CIC) considerato, id est: « quoad eius amplitudinem, complectentem integrationem interpersonalem vitae intrapersonalis viri et mulieris », quatenus eiusmodi consortium « cum sit totius vitae, secumferat necesse est communionem in sphaera intellectiva, affectivo-volitiva et organica seu sexuali, in quibus omnis personalitas implicatur » (A. STANKIEWICZ, "De causa iuridica foederis matrimonialis," in *Periodica*, n. 73, [1984], p. 225)."

is, in addition, not static but it is developmental and progressive in nature. Its development is facilitated by the fact that marriage has been elevated, by Christ the Lord, to the dignity of a sacrament. Since the partnership or the spousal communion is an essential right and obligation, an individual who, because of a serious psychic anomaly, cannot provide for this communion, cannot validly marry. The cause of the anomaly (genetic, constitutional, environmental, cultural or developmental) is, in a sense, irrelevant.

In his justification for judging this case on the basis of c. 1095, 3°, De Lanversin refers to twelve Rotal decisions, published between February 1961 and December 1986, in which adjudication was grounded in a lack of discretionary judgment. He claims that individuals may understand marriage and want a true matrimonial bond and yet the will component of consent remains inefficacious because of an incapacity to fulfill.¹¹⁴ In practice this means that the obligations inherent to an interpersonal relationship cannot be assumed. Since chronic alcoholism can be classified as a serious psychic anomaly which prevents the fulfillment of marital obligations, c. 1095, 3° is an accurate ground on which to join the issue.

In his exposé on the nature of alcoholism, De Lanversin refers to a variety of reliable sources including the work of the WHO and Jellinek's typology.¹¹⁵ He makes the transition

¹¹⁴Ibid., p. 180. De Lanversin implies that the necessary internal freedom is not present for the efficacious engagement of the will in both c. 1095, 2° and 3°. The will is not totally free under c. 1095, 2° because the knowledge base and/or critical assessment is inadequate, whereas under c. 1095, 3°, the will is lacking in freedom because of interference from a psychic anomaly.

¹¹⁵See also c. STANKIEWICZ, 22 February 1996, in *IE*, 10(1998), pp. 224-226. Stankiewicz also refers to several sources and the more current distinctions listed in the *DSM-IV*.

from behavioral science information to the canonical realm by utilizing the concept of an interpersonal relationship.¹¹⁶ In so doing he demonstrates the interdependency of the two sciences. A healthy interpersonal relationship is conducive to the establishment and development of the *bonum coniugum*, the partnership, the communion of life. Chronic alcoholism prevents the establishment and development of an interpersonal relationship because certain behaviors are characteristic of the disorder. These behaviors are listed as: instability, egocentricity, mood variability, a weakening of the moral sense, irresponsibility, volitive weakness, dishonesty, impulsivity and loss of self-esteem.¹¹⁷ Individuals differ in their behavioral manifestations and in their vulnerability to alcohol; therefore, the service of an expert is required to assess personality changes and interferences in the cognitive, affective and motivational aspects of personality. An expert's opinion may also indirectly indicate which of the three species of c. 1095 is most appropriate for the joining of issues.¹¹⁸

The *in iure* section contains a thorough presentation of relevant material from jurisprudence and the behavioral sciences. In the *in facto* section, observations recorded in the *Acta* are juridically evaluated in light of *in iure* material.

The final decision of the judges relies heavily on their evaluation of reports by experts.

¹¹⁶Ibid., p. 181: "Doctrina psychiatrica, inter symptomata psychica alcoholismi chronici, enumerat perturbationes quae ad relationes interpersonales in coniugio directe pertinent; uti sunt: labilitas affectuum et inclinationum, egocentrismus et mobilitas ingenii seu humoris ab euphoria ad depressionem, non solum sensum moralem ac responsabilitatem debilitant, sed etiam voluntate et discretione potiri vergunt."

¹¹⁷ Ibid. This list is clearly in agreement with descriptions given in the AA literature (*Alcoholics Anonymous* and *Twelve Steps and Twelve Traditions*).

¹¹⁸Ibid., pp. 182, 184.

The experts present somewhat different explanations; however, they are in agreement on the significant facts. These facts are that the petitioner manifested many symptoms of alcoholism (cognitive confusion, loneliness, mood variability, depression, loss of control, sexual “acting out”) and was indeed suffering from the disorder even during his first marriage. Although not stated directly, the *ponens* implies that consent was invalid because the petitioner was incapable of assuming the obligation to provide for the *bonum coniugum*. The other three *bona* are not mentioned in the sentence.

The *ponens* gives reasons for his dismissal of the negative second instance decision. These reasons are: an expert’s opinion was not obtained, the expert’s opinion at first instance was not assessed and utilized, the depositions were not evaluated, the arguments were weak, and the *in iure* section was unfocussed. This sentence represents a significant contribution to jurisprudence because the *ponens* makes a skillful transition from behavioral science data to the canonico-juridic forum via the concept of an interpersonal relationship.

4.5.5 - Decision *coram* BURKE, 2 December 1993

This case, originating in Omaha, Nebraska, was given an affirmative at first instance in April of 1987. The second instance tribunal confirmed this decision within a month. The respondent appealed to the Rota for a new hearing of the case claiming that his right of defense had been violated and that there were procedural irregularities. The Rota decreed a new hearing. However, in June of 1990 the respondent withdrew his appeal. Since the Rotal defender of the bond opposed renunciation, the *ponens* decreed that the case should proceed. The respondent refused to submit more evidence and the petitioner would not allow the parties’ children to provide testimony. After reports had been received from the advocates

and the defender of the bond, a judgment date was set for 10 December 1992. The *turnus* then delayed the case, by decree, in order to obtain an expert's opinion. The expert's opinion was submitted together with new briefs. Adjudication proceeded to a decision on 2 December 1993 on the ground of incapacity to assume on the part of the respondent.¹¹⁹

The *ponens* devotes the *in iure* section to a clarification of the juridic principles that govern judgment in this particular case and to a defense of the position that alcoholism, in itself, does not establish incapacity to assume. Burke begins by stating that the facts in cases involving alcoholism will determine which of c. 1095's three incapacitating species is the most appropriate ground for adjudication.¹²⁰ In any event, actual proof of incapacity to assume is dependent upon proof that dependency existed at the time of the marriage, that the condition was grave and that the condition was such that it was impossible to fulfill the essential marital obligations. Second, the right to marry is a basic human right and the existence of alcoholism, in itself, does not remove the alcoholic's right or the prospective partner's right to enter a marital union.¹²¹ Third, "any true incapacity" to be considered "under c. 1095 ... *must* be permanent in nature."¹²²

The existence of alcoholism, itself, does not establish incapacity to assume because there are many different degrees and types of alcoholism (Chapter One). Jellinek's *delta*

¹¹⁹The translation of the original sentence in Latin, is reported in *SC*, 29 (1995), pp. 509-514. Another translation is published in *ME*, 123 (1998), pp. 37-51.

¹²⁰*Ibid.*, p. 510

¹²¹*Ibid.*, pp. 511-512

¹²²*Ibid.*, p. 511.

alcoholics (Chapter One), for example, are not incapacitated and do not experience debilitating withdrawal symptoms and loss of control provided they consume a predetermined quantity of alcohol on a daily basis. *Gamma* alcoholics (Chapter One), on the other hand, do experience physical and psychological deterioration, cell adaptation and loss of control. The probability of an incapacity to assume is, therefore, much greater for the *gamma* alcoholic. Since the condition of alcoholism itself is not endowed with juridic relevance, its “scope and effect” upon incapacity to assume must be determined.¹²³ This determination can be facilitated by assistance from an expert. Burke further strengthens his position by stating that “psychiatrists seldom regard alcoholism as an absolutely irremediable problem,” that recovery for alcoholics is better if spouses “participate in their treatment,” and that “alcoholism does not of itself create a presumption of an abnormal personality.”¹²⁴

In the *in facto* section, the *ponens* outlines the reasons for the affirmative decision. These reasons are grounded in the confirmation that alcoholism pre-existed the marital state and in evidence that the respondent suffered from a “seriously abnormal” personality (violent and abusive behavior, a tendency to control and dominate others, dishonesty, irresponsibility, compulsive gambling, an inability to provide for the *bonum prolis*).¹²⁵

Although Burke presents a logical and sequential *in iure* section, some assertions within this section can be challenged. He argues, for example, “that a state of drunkenness

¹²³Ibid.

¹²⁴Ibid., p. 512.

¹²⁵Ibid., p. 513.

takes away the use of reason even in persons who are otherwise normal; therefore it induces an incapacity for giving valid consent under c. 1095, 1°.”¹²⁶ Such “a state of drunkenness” is not permanent. However, he argues later that invalidity can only be verified if the condition is permanent. Is he claiming that permanence is a requirement for invalidity under c. 1095, 3° but not for invalidity under c. 1095, 1° ? Also, the AA literature claims that, for most individuals, alcoholism once embedded is permanent because its psychological and physical damage (although partially remediable and containable) is essentially irreversible. Some of these individuals make substantial progress in recovery. They surely have the right to and can validly marry while this permanent disorder remains. Would Burke modify his position for these individuals and state that permanence does not apply to them? In addition, Burke correctly states that it is not the disorder in itself that has juridic power but only incapacity. Is it just and equitable to insist that a non-juridically relevant condition determine validity/invalidity by its permanence or non-permanence? Also, Burke claims that recovery and marital adjustment, in families centered around alcoholism, are facilitated by spousal participation in recovery programs.¹²⁷ Although this statement may be accurate for some cases, the author of the study he quotes warns that the results of her study must be interpreted with great caution because of its methodological and sampling limitations.¹²⁸ In addition, the positive results in the quoted study were found only for spouses who were both previously

¹²⁶Ibid., p. 510.

¹²⁷Ibid., p. 512.

¹²⁸J.D. McLEOD, “Spouse Concordance for Alcohol Dependence and Heavy Drinking: Evidence from a Community Sample,” in *Alcoholism: Clinical and Experimental Research*, 17 (1993), p. 1154.

alcoholic and who were both presently in recovery programs.¹²⁹ Although (as Burke claims) alcoholism, in itself, does not create the presumption of an abnormal personality, the behavioral science literature indicates that the alcoholic's level of adjustment is clearly less than optimal (Chapter Two). This adjustment level may prove to be incompatible with the fulfillment of marital obligations.

4.5.6 - Decision *coram* COLAGIOVANNI, 20 January 1994

The issues were joined, in this case, on the basis of c. 1095, 2° for the petitioner and c. 1095, 3° for the respondent. The *Acta* contained the deposition of the petitioner, the testimonies of five witnesses and a psychologist's report. The respondent did not provide testimony and did not offer a reason for her absence. The first instance tribunal gave a negative decision on both grounds (20 August 1988). Without any supplementary inquiries, the appeal court reached an affirmative decision on both grounds (28 February 1990).¹³⁰ The Rotal decision *coram* Colagiovanni (20 January 1994) was negative for both grounds.¹³¹

Since the case is adjudicated under two species of incapacity, the *ponens* divides the *in iure* section into an explanation of the jurisprudence for lack of discretionary judgment and incapacity to assume. Relying on St. Thomas Aquinas' analysis of the functioning of the spiritual faculties, Colagiovanni states that, in addition to sufficient reasoning power,

¹²⁹*Ibid.*, p. 1153. See also T. J. O'FARRELL, K.A. CHOQUETTE and H. CUTLER, "Couples Relapse Prevention, Sessions after Behavioral Marital Therapy for Male Alcoholics: Outcomes during The Three Years after Starting Treatment," in *Journal of Studies on Alcohol*, 59 (1995), pp. 357-370.

¹³⁰c. COLAGIOVANNI, 20 January 1994, in *SRR Dec.*, 86 (1994), pp. 21-22.

¹³¹*Ibid.*, pp. 21-28.

discretionary judgment must be proportionate to the formal object of marriage, equivalent, not greater than, what the law requires for full contractual capacity and (because the future is involved) greater than the judgment involved in committing a mortal sin.¹³² In addition, in the concrete situation, the marital candidate must be capable of a critical evaluation of the marital state for him/her. When this practical evaluation is impeded, freedom of will is decreased. The will must be free to choose. However, in certain cases, intellectual functioning could be intact and yet the functioning of the will could be totally impaired due to a serious affective disorder. With the above thought, Colagiovanni introduces a common controversy among judges regarding the relationship between intellect and will. Without attempting to resolve this debate, the *ponens* infers that proportionate discretionary judgment must involve sufficient knowledge, sufficient deliberation and sufficient freedom (see Section 3.4 above).

The Respondent's alleged incapacity to assume was reportedly due to her alcoholism. In this part of the *in iure* section, the *ponens*, therefore, attempts to integrate law, jurisprudence and behavioral science data on alcoholism. After equating communion of life

¹³²Ibid., pp. 24, 25: "Invalide matrimonium contrahit, ob incapacitatem matrimonialis consensus praestandi nupturiens qui, licet rationis usu gaudeat, caret tamen iudicii discretione matrimonio valide contrahendo proportionata, nempe saltem illa qua normalis puber, valens « sufficienter de matrimonio deliberare » (S. Thomas, *Suppl.*, q. 58, a. 5, coram) sicque habens « plenum usum liberi arbitrii » q. et a. cit., ad 5 aptus est « ad obligandum se perpetuo vinculo » (*Suppl.*, q. 43, a. 2, coram). Sed requiritur ergo maior discretio ad matrimonium contrahendum, quam ad mortaliter peccandum, quia non agitur de consensu in praesens sed in futurum (*Suppl.*, q. 43, a. 2, ad 2). Non requiritur tamen maioretatis discretio quam pro plena capacitate contractuali leges exigunt, quia ad matrimonium « natura inclinatur » (*Suppl.*, q. 58, a. 5, ad 1). Cf. coram Fiore, decisio diei 16 maii 1961, *R.R. Dec.*, vol. LIII, p. 233, n. 2."

with the partnership of conjugal life, Colagiovanni claims that the *bonum coniugum* (integral to the partnership) involves an integration of persons and activities (see Section 4.5.4 above). Alcoholism interferes with this integration because the condition (as a habitual psychic impairment) is often accompanied by a behavioral pattern involving irresponsibility, aggression, dependence on alcohol, a willingness to neglect relationships and social responsibilities, egocentrism, emotional lability, depression, a weakened moral sense, impulsivity, jealousy, persecutory delusions and cognitive impairments (memory, perception, thinking). This summary of behavioral science information with added references to possible therapies is similar to Pinto's exposé (see Section 4.5.2 above). In brief, Colagiovanni's focus is on the incompatibility between the obligations intrinsic to the *bonum coniugum* and alcoholism.

It appears to have been relatively easy for the judges to arrive at moral certitude and to render a negative decision on both grounds in this case. In the *in facto* section, Colagiovanni notes that the parties may have been incompatible but there is no definitive evidence in the *Acta* that the petitioner was gravely lacking in discretionary judgment at the time of marital consent.¹³³ Likewise, the respondent's alleged alcoholism, at the time of consent, could not be established because she did not provide testimony, because there were no public or private clinical documents and because there were many discrepancies between observations recorded from witnesses.¹³⁴

This sentence is a valuable model. It utilizes previous Rotal decisions, skillfully

¹³³*Ibid.*, pp. 27, 28.

¹³⁴*Ibid.*, pp. 26, 27.

integrates law, jurisprudence and behavioral science information and clarifies proof requirements.

4.5.7 - Decision *coram CIVILI*, 22 November 1994

At first instance the petition for a declaration of nullity on the petitioner's part was grounded in c. 1095, 2° and 3° while on the respondent's part it was based in c. 1095, 3° and an intention *contra bonum fidei*. The *Acta* contained the depositions of the principals, the testimonies of eleven witnesses, a report from a psychologist and a report from a psychiatrist (court appointed). The judges gave a negative response on all grounds (17 August 1990). At second instance the only ground retained was c. 1095, 3° on the part of the petitioner. For this judgment, the petitioner provided new evidence, some witnesses were added, the respondent did not respond to the citation and another expert was appointed. The appeal court gave an affirmative decision (19 November 1992). The Rotal tribunal appointed its own expert and gave an affirmative on the basis of the petitioner's incapacity to assume.¹³⁵

The *in iure* section of this sentence is devoted to a clarification of the maturity–immaturity continuum, an explanation of alcoholism and a discussion of juridic principles. Civili introduces his comments on maturity by stating that the psychic cause of c. 1095, 3° need not be a pathology in the strict sense.¹³⁶ The implication is that serious affective

¹³⁵c. CIVILI, 22 November 1994, pp. 569, 570.

¹³⁶Ibid., p. 570: "... ideoque de se non non necessario pathologicas ... At first glance it would appear that Civili's position is in conflict with John Paul II's ordinary teaching. However, this is not the case. John Paul II teaching is: "the capacity of the individual to understand and/or will" must be "substantially vitated" (Allocution to the Roman Rota, 5 February 1987, in *AAS*, 79 [1987], p. 1457) and "the freedom of the individual" must be "substantially" impaired (Allocution to the Roman Rota, 25 January 1988, in *AAS*, 80 [1988], p. 1183). The emphasis is on the effect upon the attempted consent rather than on diagnosed

immaturity (not ordinarily categorized as pathology) can result in incapacity.¹³⁷ (Thus, he indirectly emphasizes the fact that incapacity and not the disorder, by itself, has juridic relevance). With this introductory framework, he adopts E. Colagiovanni's description of maturity as a norm for the identification (through comparison) of immaturity.¹³⁸ Maturity, according to this description, is evident when *id* impulses are under the control of superior faculties (intellect and will), when there is an acceptance of the self without undue anxiety, when there is flexibility in adjustment, when relationships can be established, when obligations can be fulfilled and when one can evaluate social situations with accuracy. Judgments about maturity level are also influenced by age, personality structure, temperament, environmental

pathology.

¹³⁷This is a highly significant statement for this study's purposes. Because the degree of severity varies and can be determined by so many and often unmeasurable variables (psychological, genetic, cultural, environmental), many authors are reluctant to equate alcohol abuse with pathology (Chapters One and Two). The AA literature (*Alcoholics Anonymous* and *Twelve Steps and Twelve Traditions*) presents the alcoholic as arrested in emotional (affective) development and, in fact, alcoholics do, in general, give this impression.

¹³⁸c. CIVILI 22, November 1994, p. 570: "De immaturitate scite scribit cl. Auctor Aemilius Colagiovanni, eam definiens: « la capacità attuosa a) di controllare le sottostrutture dell'Io (pulsioni, istinti) subordinandole alle strutture superiori dell'intelligenza e della volontà nel quadro dei valori; b) di accettare i conflitti interni con moderata ansia e calibrata speranza di poterli superare; c) di instaurare rapporti con gli altri all'interno del gruppo, rispondendo agli obblighi (ruoli o funzioni); d) di avere sufficiente capacità critica nel processo di socializzazione ». Ac lucide advertit: « Come le tenebre dicono rapporto alla luce ed il relativo all'assoluto, così la immaturità, termine negativo, non si può definire e capire se non in rapporto a maturità; standard certamente non rigido, ma alveo entro il quale si colloca la norma. Una definizione di maturità non può essere che dinamica e cioè essa dice rapporto: a) all'età; b) alla personalità di ciascuno con la grande flessibilità endotimica, caratteriale ed alla modalità strutturale della persona (biofisica, affettiva, intellettuale, volitiva); c) al quadro di riferimento di ciascuno, consistente nella somma di esperienze sociali; d) alla tipicità dell'ambiente sociale, della cultura e delle norme culturali, etiche, giuridiche della società di cui è parte » (in *Monitor Ecclesiasticus* 1986, pp. 340s.)."

opportunities and cultural/social norms. Maturity is, therefore, the product of an interaction between internalized standards, personality integration, self-acceptance and social norms.

Civili then distinguishes between acute and chronic alcoholism. When acute alcoholism is involved, c. 1095, 1° may be the more appropriate ground (see Section 4.5.5 above). Chronic alcoholism may involve damage to the brain, bodily organs and psychic structures (intellectual, volitive, and affective functions). If chronic alcoholism is serious prior to consent, incapacity to assume serious, perpetual and *bonum coniugum* obligations, can reasonably be presumed. The degree of severity can be determined with assistance from experts. In his explanation of juridic principles, it is clear that Civili does not uncritically accept the principles of curability (within a reasonable time and through ordinary means) and antecedence.¹³⁹

In the *in facto* section of the sentence, the *ponens* presents a thorough analysis of observations recorded in the *Acta*. The evidence indicates that the petitioner was, at the time of consent, the adult child of an alcoholic, suffered from chronic alcoholism and was arrested in emotional development.¹⁴⁰ Symptoms referred to include: affective immaturity,

¹³⁹Ibid, p. 571. In referring to the first instance the *ponens* states: "Talis assertio [curability] ab infrascriptis Patribus subscribi non potest, quia, uti ceterum rectissime enuntiat eadem sententia paucis ante lineis: « Incapacitas exsistere debet momento praestationis consensus, quo vinculum oritur ». Ac revera recentior iurisprudencia unanimis est in affirmando non esse necessariam antecedentiam neque perpetuitatem incapacitatis. Profecto antecedentia utilis erit ad roborandam probationem existentiae incapacitatis matrimonii tempore. Eadem sententia primae instantiae in n. 10 ait iurisprudenciam rotalem esse unanimem in reiicienda hypothesi quod psychologica incapacitas esse possit relativa. Quod non est undequaque verum, quia nonnullae recentiores sententiae ab uno tamen Turno latae talem hypothesin admiserunt. Summum dici potest dari in re dubium iuris; quo exstante matrimonium gaudet favore iuris, ad normam can. 1060."

¹⁴⁰Ibid., pp. 571-576.

resentments, self-pity, eating problems, obsessive-compulsive tendencies, black-outs, compulsive spending, loneliness, depression, guilt, fear, jealousy, paranoid tendencies, vulgarity, aggressiveness.¹⁴¹

Civili's sentence is of considerable interest for several reasons. First, although substantial evidence for the incapacity of c. 1095, 3° on the part of the petitioner is present in the *Acta*, expert opinion was nevertheless obtained. Second, the original four grounds were reduced to one at second instance and the same ground was pursued by the Rota because of strong evidence for this one ground. Third, the focus is on the *bonum coniugum* as an essential obligation within the marital partnership.¹⁴² Fourth, the removal of the *vetitum* is reserved to the Rota rather than the Ordinary.

4.5.8 - Decision *coram* LÓPEZ-ILLANA, 14 December 1994

The validity of the petitioner's consent (not the respondent's) was in question in this case. The issue was joined, at first instance, on the basis of c. 1095, 3° and total simulation according to the norms of the 1917 Code (cc.1081 and 1086). The *Acta* contained the depositions of the principals, the testimonies of nine witnesses, and two reports from expert witnesses (one submitted by the petitioner's advocate and one by a court-appointed expert). The petitioner's advocate did not argue in favour of the ground of simulation. On 25 May 1994, the judges gave a negative decision to the ground of total simulation and an affirmative decision on the basis of c. 1095, 3°. The respondent appealed this decision and the question

¹⁴¹There is a remarkable similarity between this list of symptoms and symptoms diagnostic for the more severe forms of alcoholism (Chapter One).

¹⁴²c. CIVILI, 22 November 1994, p. 571: "Eminet inter ista id quod concernit bonum coniugum (can. 1055, § 1)."

before the Rota, on 14 December 1994, was whether the first instance decision could be confirmed at once or whether the case should be admitted to an ordinary hearing.¹⁴³ The Rotal turnus proceeded to an ordinary hearing and rendered an affirmative decision on the petitioner's incapacity to assume.¹⁴⁴

In the *in iure* section of this sentence, the *ponens* discusses at length c. 1095, its jurisprudence, epilepsy and alcoholism. Although adjudication is grounded only in c. 1095, 3°, the inclusion of an explanation of the other two species of incapacity is justified on the basis of a need for clarification.¹⁴⁵

The *ponens* explains that the requirements for a valid act of consent, as imbedded in c. 1095, include sufficient use of reason, proportionate discretionary judgment and the capacity to fulfill marital obligations. In the first two species of incapacity the focus is on the act of consent itself, whereas, in the third species, the focus shifts to the formal object of consent. It is possible for an individual to enjoy sufficient use of reason and proportionate discretionary judgment and yet be incapable of assuming and fulfilling obligations. Proportionate discretionary judgment exists, according to the *ponens*, when the marital candidate understands the content of c. 1096, when he/she can assess the implications of obligations (the four *bona*) for marriage itself and for the self, and when the level of discretion

¹⁴³c. LÓPEZ-ILLANA, 14 December 1994, in *SRR Dec.*, pp. 687-689.

¹⁴⁴*Ibid.*, p. 717.

¹⁴⁵*Ibid.*, p. 703: "Nam Supremus Legislator, in canone 1095, nedum formaliter sed et reapse, inter tres factispecies distinctionem posuit (cf. *coram POMPEDDA*, decisio diei 19 octobris 1990, *R.R. Dec.*, vol. LXXXII, pp. 686s., nn. 4-5). Haec, enim, nullitatis capita confundenda non sunt, nec de uno vel altero absque distinctione disserere licet."

is greater than that required for mortal sin and other contracts. It can be determined that an incapacity to assume is present, according to López-Illana, only when a real impossibility of fulfillment exists, when the capacity of the individual to understand and/or will is substantially vitiated and when internal freedom is substantially impaired.¹⁴⁶

López-Illana makes the transition from the law/jurisprudence discussion to the integration of jurisprudence and alcoholism with the statement "those who suffer from ...chronic alcoholism cannot generally be said to be masters of their acts."¹⁴⁷ The determination that individuals are not masters of their acts can be made with assistance from experts.

The section on epilepsy and alcoholism is comprehensive and informative. It includes the usual distinction between acute and chronic alcoholism, the listing of symptoms and a clarification of the effects of alcoholism on behavior.¹⁴⁸

There are several stages in acute alcoholism. Progression through these stages increasingly impairs use of reason and free determination. When the use of reason is totally removed, at the time of consent, adjudication can be grounded in c. 1095, 1°. However, when the use of reason and free determination are only partially diminished, due to alcohol consumption, the contractant may well be able to exercise discretionary judgement (c. 1095,

¹⁴⁶In this section, the author quotes from John Paul II's Rotal Allocutions of 1987 and 1988.

¹⁴⁷c.LÓPEZ-ILLANA, 14 December 1994, p. 691: ". . . gravi morbo comitali et alcoholismo chronico laborantes, . . . , qui suorum actuum et domini plerumque dici nequeunt."

¹⁴⁸The author's analysis of the behavioral science information on epilepsy will not be discussed in this presentation. His material on alcoholism is outlined in previous sentences.

2°) and assume essential obligations (c. 1095, 3°). The judge is required to assess severity of interference from alcohol consumption. If there is a definitive diagnosis of chronic alcoholism, at the time of consent, it can be presumed that proportionate discretionary judgment is not present.¹⁴⁹ Actual proof of disproportionate discretionary judgment can be obtained from an analysis of all the facts together with the application of Sabattani's criteria¹⁵⁰ (see Section 3.4.1.1 above). In addition, López-Illana states that if there is a definitive diagnosis of chronic alcoholism at the time of consent and if serious maladjustment becomes apparent only shortly after consent is exchanged, a presumption for inability to assume exists because of the progressive nature of alcoholism.¹⁵¹ In general, this statement does not warrant criticism. However, the presumption exists because of both the diagnosis and the time period between consent and problem manifestation. If the time between consent and the appearance of serious problems is brief, progression could hardly have occurred. Also, alcoholism is not progressive in every person (Chapter One).

López-Illana concludes the *in iure* section by stating that expert opinion should always

¹⁴⁹*Ibid.*, pp. 699-700.

¹⁵⁰López-Illana neglects to attribute these criteria to Sabattani. The difference between Sabattani and López-Illana, on the significance of the criteria, is more apparent than real. For the latter judge, full proof is possible only when there is an analysis, by the judges, of the facts and the criteria. For the former author, full proof would appear to be present, under certain circumstances, through the accurate routine application of the criteria. However, proof always requires an intervention on the part of the judge.

¹⁵¹LÓPEZ-ILLANA, 14 December 1994, p. 701: "Sin autem habetur certa morbi aut alcoholismi chronici cognitio seu « diagnosis » quoad tempus matrimonii, licet graves perturbationes tantum paulo post matrimonii celebrationem paterent, habetur praesumptio pro matrimonii nullitate, quia, cum morbus iste sit natura sua progrediens, contrahens incapax erat obligationes matrimonii essentielles assumendi (cf. can. 1095, n.3)."

be obtained when alcoholism is involved regardless of the species of incapacity in which adjudication is grounded. He claims that, for the Rota, c. 1095, 2° has been the ground for several cases and he provides a list of Rotal sentences to substantiate this claim.

Because there are many contradictions in the testimonies of the principals and in the testimonies of the witnesses and discrepancies between the various expert opinions, the *ponens* creates structure and organization for the evidence by dividing the time prior to marriage into three periods. He then carefully analyzes all evidence relevant to each period. From this analysis he is able to conclude that the Petitioner's pathological psychic condition, at the time of consent, was incompatible with the assumption of essential marital obligations and was due to the combination of epileptic medication and alcohol consumption rather than either alcoholism or epilepsy.¹⁵²

The theme that provides cohesiveness within each section and unity between all three sections of this lengthy sentence is the appropriateness of the different species of incapacity for the adjudication of cases involving alcoholism. The choice of the ground should be governed by the circumstances and the impact that alcoholism has on capacity to perform the human act of consent. The sentence, itself, demonstrates how the imposition of structure on confusing evidence can facilitate the decision-making process.

4.5.9 - Common jurisprudential themes and their applications.

The Rotal decisions discussed above reflect the fact that an individual who cannot fulfill the essential obligations of marriage cannot assume them through an efficacious human

¹⁵²*Ibid.*, p. 716.

act of consent. The will to assume is rendered inefficacious by the inability to fulfill. An incompatibility exists between capacity and the obligations intrinsic to the formal object of consent. Moral or physical impossibility (and not mere difficulty) must be present, otherwise the right to marry remains. The impossibility is said to be due to the impact of a psychic cause.

The first theme that appears to be present is that the psychic cause by itself does not have juridic relevance. Incapacity resulting from a psychic cause has juridic relevance (Bruno; De Lanversin, 1989; Burke; Civili). The psychic cause must be serious; that is, it must have the power to invalidate. When a psychic cause renders a marital interpersonal relationship impossible, a declaration of nullity is justified (De Lanversin, 1983; Pinto; De Lanversin, 1989; Colagiovanni). In the view of several Rotal judges, the interpersonal relationship is an essential cornerstone of the *bonum coniugum*. The *bonum coniugum* is a right and obligation within the marital partnership (canonical concept) or communion of life (theological concept). Thus the judges emphasize that the capacity to assume the obligation to provide for the *bonum coniugum* is incompatible with *chronic alcoholism* as a serious psychic disorder (Pinto; De Lanversin, 1989; Civili; Colagiovanni). The judges do not state explicitly that the *bonum coniugum* is the ground for adjudication apart from the complex of right and obligations. Since the existence of alcoholism itself does not prove invalidity, level of severity must be established in order to judge (with moral certitude) that an incompatibility exists between the contractant's behaviour and the requirements of consent. How is this level of severity assessed?

A second theme is the obligation to obtain expert opinion on the degree to which

alcoholism interferes with affective, cognitive and motivational functioning (De Lanversin, 1983; Pinto; De Lanversin, 1986; Burke; Civili; López-Illana). This obligation appears to be far more stringent when c. 1095, 3° is the ground for adjudication rather than c. 1095, 1° and 2°. ¹⁵³ Normal functioning (affective, cognitive, motivational) facilitates the development of interpersonal relationships and, therefore, assessment of degree of interference enables the judge to measure severity of incapacity. A third theme is that the use of Jellinek's typology and Sabattani's criteria is beneficial for an evaluation of the alcoholic's level of impairment (De Lanversin, 1983; Bruno; De Lanversin, 1986; Burke; López-Illana).

Fourth, the judges routinely distinguish between acute and chronic alcoholism. For some judges, the most appropriate ground for the judgment of cases involving acute alcoholism is c. 1095, 1° (Burke; Civili; López-Illana). A definitive diagnosis of chronic alcoholism establishes a presumption for incapacity to assume (Bruno; López-Illana).

Finally, the juridic principle of the permanence of the condition or incurability (by ordinary means and within a reasonable time) is directly referred to by Pinto and Burke. Other judges do not include it in their discussions, possibly because ambiguity surrounds its objective value for justice and equity.

There are many similarities in the approaches adopted by Rotal judges. Civili appears to be the more explicit of the Rotal judges in his questioning of the utility of the principles of perpetuity and antecedence (see note 139 above) and in his emphasis on affective immaturity

¹⁵³Only López-Illana explicitly states that expertise should be obtained for the adjudication of cases involving alcoholism on any of species of incapacity.

as indicative of an inability to assume.¹⁵⁴

These Rotal sentences demonstrate the value of law for life. They reflect a detailed assessment of the juridic significance of behaviors recorded in the *Acta*, an adherence to procedural law, an accurate application of juridic principles and a reasoned transition from behavioral science information to law application.

Conclusions

The essential obligations of c. 1095, 3° are the formal object of marriage. These obligations are derived from marriage itself and its four *bona* (cc. 1055, § 1, 1056, 1101, § 2, 1135, 1136). An individual has a right to marry (c. 1058) unless he/she is incapable of fulfilling (and, therefore, assuming) essential obligations. Jurisprudence, in order to protect this basic right, has stringently focused on capacity/incapacity to provide for the *bona* of marriage. However, doctrine, jurisprudence and the behavioral sciences may cooperatively discover other obligations, essential to marriage, that can be derived from its constitutive nature.

In determining capacity to assume, the principle of proportionality has practical value. Proportionality has been applied primarily in the context of c. 1095, 2°. However, a person must have intrapersonal ability that is proportionate to essential obligations in order to fulfill them. The fulfillment of essential obligations obviously requires a certain level of

¹⁵⁴c. CIVILI, 22 November 1994, p. 570: "Patet utique ex praecepto canonis 1095, n. 3 CIC incapaces esse matrimonium contrahendi eos qui essentialia matrimonii onera adsumere non valent ob causas naturae *psychicae*, ideoque de se non necessario *pathologicas*; ast negari nequit quod si addatur pathologicum elementum, facilius erit probatio incapacitatis ipsius. Quod facile evenire potest ex. gr. in casibus gravis immaturitatis affectivae, in neurosibus obsessivis, in vitiis congenitis vel acquisitis ut, puta, alcoholismo."

personality integration, maturity and stability. Jurisprudence has expressed this requirement by stating that sufficient intrapersonal integration is necessary to enter into an intimate interpersonal relationship. The specific, unique, exclusive and permanent interpersonal relationship that is marriage is juridically concretized through the *bona* and the interrelationships between the *bona*.

In order to measure intrapersonal integration (and, therefore, capacity for the interpersonality of marriage), scientists have studied affective, cognitive and motivational functioning. Sufficient cognitive capacity, in the present context, includes the ability to understand marriage and its *bona* and the ability to estimate one's own and the other's ability for marriage. Affective ability includes the ability to enter into the interpersonal relationship and to provide for the *bona* with empathy, integrity, honesty and responsibility. Motivational ability is sufficient when an individual possesses the willingness and internal strength to enter into marriage and to persevere through its developmental stages.

This chapter has discussed proportionality between the alcoholic's capacity (cognitive, affective, motivational functioning) and the essential obligations of marriage. For Rotal jurisprudence, chronic alcoholism includes the entire range from alcohol dependence to seriously debilitating involvement with alcohol. With more serious involvement there is a higher probability that the level of intrapersonal integration and functioning will be disproportionate for the fulfillment of marital obligations. In order to assess the level of intrapersonal integration and to determine whether or not a psychic cause exists, Rotal judges have routinely insisted on assistance from experts (c. 1574).

The question of psychic cause has been somewhat problematic for jurisprudence. The

problem arises because the psychic cause (alcoholism) is not, by itself, endowed with juridic relevance. Judges have, therefore, attended to the impact of the psychic cause on capacity to assume and fulfill. The assessment of this impact is facilitated by the application of the principles of antecedence, severity, perpetuity and relativity.

Antecedence indicates that the debilitating condition must exist at the time of consent for a consideration of invalidity. Judges have determined, therefore, that when serious acute alcoholism (intoxication) exists at the time of consent proportionate use of reason is likely not present and the appropriate ground for adjudication is c. 1095, 1°. The principle of severity indicates that the impairment (due to alcoholism) renders the capacity to fulfill physically and/or morally impossible. The principle of perpetuity is controversial. The position taken in this study is that insistence on this requirement of perpetuity, that is, incurability of the cause with ordinary and licit means, endangers justice and equity. If alcoholism exists at the time of consent and if its severity is such that the assumption of the essential obligations is morally impossible, a declaration of nullity is justified regardless of future developments. The principle of relativity is also controversial. The acceptance of relativity, as a justification for a declaration of nullity, would mean essential obligations could not be assumed because of a serious dysfunctionality in the interaction between parties. It is difficult to foresee how the concept of relative incapacity could become a viable concept for the adjudication of cases involving alcoholism.¹⁵⁵ Although some individuals are more tolerant of alcohol abuse in their

¹⁵⁵Civili seems to suggest that closure on this issue would be premature at this point in time. He writes: "Eadem sententia primae instantiae in n.10 ait iurisprudentiam rotalem esse unanimum in reiicienda hypothesi quod psychologica incapacitas esse possit relativa. Quod non est undequaque verum, quia nonnullae recentiores sententiae ab uno tamen Turno latae talem hypothesin admiserunt. Summum dici potest dari in re dubium iuris; quo exstante

partners than others, the focus of adjudication is, nevertheless, on the alcoholic's capacity/incapacity to assume marital obligations at the time of consent.

In assessing the alcoholic's capacity to assume essential obligations, it is understandable that Rotal auditors have focused directly or indirectly on the interpersonal relationship as a significant element of the *bonum coniugum*. The interpersonal relationship forms a bridge between behavioral science information and jurisprudence. However, doctrine and magisterial teaching (*Arcanum, Casti connubii, GS, HV, FC*) insist that the *bona* of marriage are interdependent. Jurisprudence, in the future, may place greater emphasis on the other *bona*, especially capacity to parent (*bonum prolis*), in its evaluation of the alcoholic's ability to assume essential marital obligations.

To conclude, the position taken in this study is: if it is proven that acute alcoholism at the time of consent removes proportionate use of reason, a declaration of nullity, grounded in c. 1095, 1° or c.1095, 2°, is justified. A primary conclusion is that chronic alcoholism (alcohol dependence), proven to exist at the time of consent and proven to be incompatible with the assumption of marital obligations, justifies a declaration of nullity grounded in c. 1095, 3°. Proof of the existence of alcohol abuse, at the time of consent, without proof of actual dependence, warrants a serious investigation of level of intrapersonal integration (cognitive, affective and motivational functioning) to determine whether or not the party involved had the capacity to provide for the *bona* of marriage.

matrimonium gaudet favore iuris, ad normam can. 1060" (ibid., p. 571).

CHAPTER FIVE

SOME RELEVANT ISSUES ASSOCIATED WITH MARRIAGE NULLITY CASES INVOLVING ALCOHOLISM

INTRODUCTION

In an attempt to present a more comprehensive perspective on marriage nullity cases involving alcoholism, we will discuss, within the limited scope of this chapter, four issues associated with the adjudication process. These four issues have been chosen because of a theme common to them, namely, the right to benefit, directly or indirectly, from the “spiritual riches of the Church” (c. 213). The first topic of discussion concerns the possible use of cc. 1097, 1098 and 1102 for the adjudication of marriage cases involving alcoholism. Of the canons, other than c. 1095, on marital consent, these are the most probable sources of marriage nullity. The principle of equity may require their use in certain cases. The right to petition the Church to hear one's case (c. 221, §1) may indirectly include the right to adjudication on the most appropriate ground (c. 221, §2). In some cases, any one of c. 1097, c. 1098 or c. 1102 could be the preferable ground. The second issue is related to the Church's right and obligation to protect the dignity of the sacraments. Prohibitions can, therefore, be used to indicate to individuals the significance of marriage and the changes that must occur before they can benefit in a maximum manner from the sacrament of marriage. The third issue involves the defense of one's rights before an ecclesiastical court (c. 221). This defense may also require the appointment of an advocate, procurator or curator. The presence of these legal representatives ensures that an individual will enjoy the full benefit of the law and that juridical status will be accurately determined. The fourth issue has to do with one's right to benefit more concretely “from the spiritual riches of the church.” This right can be exercised

through the acceptance of pastoral care offered by the Church. Since recovery from alcoholism invariably involves a spiritual dimension, pastoral care would seem to be a logical resource for assistance in recovery.

5.1 - Other possible grounds of nullity in matrimonial cases involving alcoholism

The Rotal decisions concerning alcoholism, discussed in Chapters Three and Four, involved cases presented on the basis of c. 1095. In these cases, c. 1095 was the more accurate choice. Nevertheless, the facts of a specific case may suggest that other canons in the Code's section on Matrimonial Consent are admissible and even preferable as grounds for adjudication in cases involving alcoholism. Quality of consent is a common theme that appears to be present in many of the formally distinct canons on consent. Quality of consent is undoubtedly a product of the individual's personality structure and it can reveal intellective and volitive functioning. This section will discuss the possible application of three canons (1097, 1098, 1102) that have particular relevance for adjudication of cases involving alcoholism.

5.1.1 - Canon 1097 and alcoholism

There are notable similarities between c. 1083 (*CIC/17*) and c. 1097 (*CIC/83*). Although a reference to error of condition (slavery)¹ is not retained in c. 1097, the concepts of identity of person and error of quality remain. Canon 1097 reads:

§1. Error concerning the person renders marriage invalid.

¹ See P. HENNESSY, "Canon 1097: A Requiem for *error redundans*?" in *The Jurist*, 49 (1989), p. 173. This author states: "It is always possible for the Church, through positive legislation, to designate contemporary equivalents of the condition of slavery."

§2. Error concerning a quality of a person, even if such error is the cause of the contract, does not invalidate matrimony unless this quality was directly and principally intended.²

The legislator's intended meaning for the phrases "quality of a person and directly and principal intended" has received considerable commentary both before and since the promulgation of the 1983 Code.³ St. Thomas Aquinas presents an early and lucid explanation of these terms applicable to c. 1097. He writes:

Error about a person's rank as such does not void a marriage, for the same reason that neither does error about a personal quality. If, however, the error about a person's rank or position amounts to an error about the person, it is an impediment to marriage. Hence, if the woman consents directly to this particular person, her error about his rank does not void the marriage; but if she intends directly to marry the king's son, whoever he may be, then if another other than the king's son be brought to her, there is error about the person and the marriage will be void.⁴

²§1. Error in persona invalidum reddit matrimonium.

§2. Error in qualitate personae, etsi det causam contractui, matrimonium irritum non reddit, nisi haec qualitas directe et principaliter intendatur."

³See M.J. REINHARDT, "Error qualitatis in errorem personae redundans," in *CLSA Proceedings*, 35 (1973), p. 56. See also c. CUSCHIERI, 4 February 1977, in J.E. HUDSON (ed.), *Documentation II on Marriage Nullity Cases*, Ottawa, Saint Paul University, 1979, pp. 51-76; J.A. MOHLER, "De errore in qualitate communi ad nuptias quaesita," in *Apollinaris*, 34 (1961), pp. 376-377; A.M. RODRIQUEZ, "De errore redundante in doctrina et jurisprudentia canonica," in *Periodica*, 65 (1976), pp. 388; W. DALTON, "Error redundans: A Look at Some Recent Jurisprudence," in *CLSGBI Newsletter*, 50 (1981), p. 15; V.R. BERNÁLDEZ, "Error y dolo en el consentimiento matrimonial canónico," in M. THÉRIAULT and J. THORN (eds.), *The New Code of Canon Law: Proceedings of the 5th International Congress of Canon Law*, Ottawa, Saint Paul University, 1986, pp. 1047-1062; U. NAVARRETE, "Error circa personam et error circa qualitates communes se non identificantes (Can. 1097)," in *Periodica*, 82 (1993), pp. 637-667.

⁴*Summa theologiae, Supplementum*, p. 51, a. 2, ad 3. For St. Thomas, "a quality directly and principally intended" appears to be one that is so significant for a person that it is of the essence of the other's personality or it defines the other or individuates or is equivalent to the other person as the object of consent. Without this particular quality the other person could not exist as the object of consent. The quality is principally intended

Since the promulgation of the 1983 Code, canonists have clarified the meanings of the phrases “quality of person” and “directly and principally intended.” T.P. Doyle, for example, describes a quality as “some aspect of the person that contributes to the personality directly” and states that “directly and principally” implies that consent is given “precisely and only because of a perceived quality.”⁵ L. Örsy states the “directly must mean that it is not intended by any intermediary...” and “principally must mean ‘above all’, as when a person wants good health so much in the other that unless it is there, he is not willing to marry her.”⁶ The meaning of “error of quality” receives further clarification from a consideration of c. 126. Canon 126 states that “an act is invalid when performed as a result of ... error which ... amounts to a condition *sine qua non*.” That is, the quality “directly and principally” intended must enter into the essence of the act of consent. This does not mean that the party must explicitly and through a positive act of the will advert to the quality at the moment of consent. The quality can be habitually, virtually and implicitly present in the intention of the party. The party does not doubt that the quality is present in the other and does not realize that he/she is in a state of error. The quality must be, however, subjectively significant for the party to the extent that marriage would not occur in its absence. The quality, by its very nature, would not need to have the capacity to destroy conjugal life but a serious disruption of conjugal life

because it is intended for itself. St. Thomas’ concept of “persona” may indirectly speak to the freedom and right of a party to determine for himself/herself the quality of the material object of consent. Since consent itself presupposes freedom, this freedom to determine becomes integral to the very act of consent.

⁵DOYLE, “Marriage,” in *CLSA Commentary*, p. 780.

⁶ÖRSY, *Marriage in Canon Law*, 986, p. 137.

following the discovery of the error would facilitate proof that it was directly and principally intended. What must be determined for proof is that the quality was subjectively a *sine qua non* for a party's consent.

In his 30 January 1993 allocution to the Roman Rota, Pope John Paul II explicitly admonished caution and wisdom in the use of certain grounds of nullity. He specifically referred to, besides simulation (c. 1101, §2) and error of law (c. 1099), error mentioned in c. 1097. He said:

Subjecting canon law to capricious or contrived interpretations, in the name of an ambiguous and indefinite *humanitarian principle*, would mean destroying the very dignity of man, even before the norm.

Thus, to give an example, it could cause serious harm to the stability of marriage and so to its sacred nature, if ... in the matter of *error of fact* (*error facti*) too, specifically when it is a question of "error of person" (*error in persona*, c. 1097, §1), one may not attribute to the terms used by the legislator a meaning alien to canonical tradition; even as "error about a quality of the person" can impugn the consent only when a quality, neither frivolous nor trivial, was "directly and principally intended" (c. 1097, §2), that is, as Rotal jurisprudence has effectively asserted: "when the quality is intended before the person" (*quando qualitas prae persona intendatur*).⁷

In this allocution, one can find the mind of the legislator concerning the attributes of the quality required to constitute the ground of nullity specified in c. 1097, §2. The quality must not be "frivolous" nor "trivial." In other words, it must be objectively serious and one that is "intended *prae persona*." Any interpretation of the principle of error of quality must take into consideration this admonition of the supreme legislator.

⁷ See JOHN PAUL II, Allocution to the Roman Rota, 30 January 1993, in WOESTMAN, *Papal Allocutions to the Roman Rota 1939-1994*, p. 226.

Can c. 1097 be a ground for adjudication of cases involving alcoholism? Individuals who spend their developmental years in families centered around alcohol may be determined to enter marriage only with a partner who has the quality of freedom from alcoholism. Freedom from alcoholism can be an objectively, and subjectively, grave quality. If it can be determined that freedom from alcoholism in a marital partner was a quality that was “directly and principally” intended (as a *conditio sine qua non*) by the other partner, then, clearly, c. 1097 would be applicable. The alcoholic partner, because of the defense mechanisms of denial and rationalization, could be totally free of any intent to deceive the other partner.⁸ The impact of deception on consent will be discussed in the following subsection.

5.1.2 - Canon 1098 and alcoholism

Canons 1097 and 1098 share two themes. The erring party does not recognize the presence of subjective error and consent is rendered inefficacious by error about quality of person. There are also differences between these two canons which justify their specification as distinct grounds for adjudication. Canon 1098 locates the cause of the error in the person deceived, in the deliberate intention of the deceiver to extract matrimonial consent, and the deception itself about a quality that can seriously interfere with the marriage. Canon 1098 reads:

A person contracts invalidly who enters marriage inveigled by deceit, perpetrated in order to secure consent, concerning some quality of the other

⁸The literature on alcoholism indicates that many alcoholics utilize the defense mechanism of denial and rationalization in order to continue drinking and to justify the abuse of alcohol (see Chapter Two).

party, which of its very nature can seriously disrupt the partnership of conjugal life.⁹

In c. 1098 *dolus* is established specifically as a *caput nullitatis* for the first time in canonical legislation. This canon is an example of a law that provides for the nullifying effects of *dolus* on a juridic act (c. 125, §2). As such, it is a law that protects rights, and gives legal expression to the conception of marriage in *Gaudium et spes* as an open and honest giving and receiving of the total conjugal self. Its recency is perhaps partially responsible for the debate among canonists regarding its status (a representation of natural law or human positive law).¹⁰ This debate will undoubtedly be resolved through research and through its application.¹¹

In addition to clarifying the source of c. 1098, research may also further specify criteria for the measurement of seriousness and determine the kinds of qualities envisioned by this canon. The two aspects of seriousness of quality and kind of quality are not entirely

⁹“Qui matrimonium init deceptus dolo, ad obtinendum consensum patrato, circa aliquam alterius partis qualitatem, quae suapte natura consortium vitae coniugalis graviter perturbare potest, invalide contrahit.”

¹⁰Several canonists seem to imply that c. 1098 is an expression of the natural law. See J. GRESSIER, “La nullité du mariage conclu sous l’effet du dol qualifié du canon 1098 est de droit naturel,” in *SC*, 30 (1996), pp. 343-370. Gressier argues in favour of the natural law origin of c. 1098. His conclusion is based on an understanding of human dignity and freedom as the natural foundations of the human act. *Dolus* involves a violation of dignity and freedom and this is contrary to the natural law. See also c. SERRANO, 1 June 1990, p. 22; U. NAVARRETE, “Canon 1098 de errore doloso estne iuris naturalis an iuris Ecclesiae?” in *Periodica*, 76 (1987), pp. 161-181; c. STANKIEWICZ, 30 January 1992, in *ME*, 118 (1993), p. 532.

¹¹See JOHN PAUL II, Allocution to the Roman Rota, 23 January 1992, in WOESTMAN, *Papal Allocutions to the Roman Rota 1939-1994*, p. 221: “the work of judging consists in bringing the law to bear on reality and thus fulfilling the intent of the abstract norm.”

distinct and are, at least partially, culturally conditioned. The canon itself states that the quality must be one “which of its very nature can seriously disrupt the partnership of conjugal life.” Does this formulation allow, for example, the petitioner's value system to determine the quality and its seriousness? Canonists have attempted to establish criteria for the measurement of seriousness and the kinds of qualities that meet the requirements of this canon.

For Burke the words “of its very nature” exclude “any subjective interpretation of the importance of the quality” and indicate “a quality... [that] involves an objectively grave defect.”¹² In addition, Burke claims that it “is becoming fairly common doctrine” to require “that the threat, represented by the concealed bad quality, must relate to the essential aspects of the married consortium.”¹³ De Lanversin suggests that the “essence, properties or ends, ... with respect to marriage considered in general” should be the determining criteria.¹⁴ Pompedda's focus is somewhat different and is on the subsequent-to-consent common life. According to this auditor, the emergence of serious problems (in the common life) directly related to the quality, fraudulently concealed, is a substantive criterion.¹⁵ The difficulty encountered by canonists in the development of criteria for the canonically valid

¹²c. BURKE, 25 October 1990, in *SC*, 26 (1992), p. 238. An insistence on objectivity can prevent potential negative consequences, such as: scandal (due to “easy” declarations of nullity), trivialization of the law and idiosyncrasies of individuals resulting in nullity declarations.

¹³Ibid.

¹⁴c. DE LANVER SIN, 17 March 1993, in *Periodica*, 84 (1995), p. 115.

¹⁵c. POMPEDDA, 6 February 1992, in *IE*, 6 (1994), p. 586.

implementation of c. 1098 may result, at least in part, from the requirement that a universal law be applied to a variety of cultures.¹⁶ Also, a quality deemed to be highly significant during one age may be less so in another historical period.¹⁷

The requirement that a quality possess *some* objective importance to qualify under c. 1098 is not questioned by canonists. However, determining the meaning of "objective" and the degree of seriousness required to invalidate consent is not an easy matter.¹⁸ Would, for example, alcohol dependence be sufficiently serious and alcohol abuse not sufficiently serious to qualify? Judges and canonists have attempted to identify qualities that could meet the requirements of c. 1098. T.P. Doyle includes in his list "ongoing psychiatric illness or personality disturbance; serious medical conditions such as syphilis; pregnancy by someone else; a criminal record or immoral lifestyle; a previous marriage whether canonically valid or not."¹⁹ Other qualities have been mentioned by Rotal auditors in cases involving *dolus*. Some

¹⁶Virginity, for example, may be a very important quality in most Asian societies and a relatively unimportant quality in North American society. See c. FALTIN, 26 May 1989, in *SRR Dec.*, 81 (1989), pp. 379-388.

¹⁷Is virginity in contemporary England as important as it was during the Victorian era?

¹⁸Some ambiguity in the jurisprudence for c. 1098 is somewhat unfortuitous and may be reflective of the ambiguity characteristic of life itself. Ambiguity in the law intensifies the judges' responsibility for a just and equitable application to unique cases.

¹⁹DOYLE, "Marriage," p. 615. See also F.G. MORRISEY, "Revising Church Legislation on Marriage," in *Origins*, 9 (1979-1980), p. 217; B. GANGOITI, "Error, nullatenus dolus, est causa directa nullitatis matrimonii," in *Studia Universitatis S. Thomae in Urbe*, 5 (1974), pp. 33-34.

of the qualities are: age²⁰, virginity²¹, sterility,²² membership in a subversive group,²³ homosexuality,²⁴ feigned affection for children from a former marriage.²⁵

The criterion that the canon specifies for an invalidating quality is that it have the power to “seriously disrupt the partnership of conjugal life.” It is difficult to comprehend how age, in itself, could qualify under this criterion and how it relates to the essence of marriage (Burke and De Lanversin). In Rotal decisions involving age as the object of deception, adjudication has been grounded in additional canons (1097, §2; 1095, 2° and 3°) and on other facts (mental health).²⁶ Deception does not usually exist in isolation from other negative qualities. The integrity of the consent of the deceiver who presents a distorted self as the material object can readily become a ground for adjudication.

The intention of the deceiver and the manner of deception also must be examined. The canon states that *dolus* must be “perpetrated in order to secure consent.” It does not

²⁰See *c. STANKIEWICZ*, 30 January 1992, pp. 529-537. See also *c. POMPEDDA*, 6 February 1992, pp. 573-591.

²¹See *c. DAVINO*, 26 March 1987, in *SRR Dec.*, 79 (1987), pp. 153-159. See also *c. FALTIN*, 26 May 1989, pp. 379-388.

²²See *c. DE LANVERSIN*, 15 June 1989 in *SRR Dec.*, 81 (1989), pp. 423-435. See also, *c. STANKIEWICZ*, 13 December 1990, *ibid.*, 82 (1990), pp. 847-855; *c. DAVINO*, 22 October 1992, in *ME*, 118 (1993), pp. 521-528.

²³See *c. STANKIEWICZ*, 22 July 1993, in *IE*, 6 (1994), pp. 609-623.

²⁴ See *c. BURKE*, 25 October 1990, pp. 235-243.

²⁵See *c. FUNGHINI*, 20 December 1989, in *SRR Dec.*, 82 (1989), pp. 775-788.

²⁶See *c. POMPEDDA*, 6 February 1992, pp 573-591. See also *c. STANKIEWICZ*, 30 January 1992, pp. 194-208.

exclude deception by a third party but only insists that the deception be real, successful and focused. Does this mean that the lawgiver intends to legislate only for *obreptio* (submitting false information) and not *subreptio* (withholding significant information).²⁷ Is the marriage of an alcoholic invalid only when he/she deliberately denies the alcoholism in order to obtain consent or is it invalid when alcoholism is not alluded to in order to procure consent? A candidate for marriage cannot reveal everything to a prospective spouse nor is there an obligation to do so.²⁸ However, *subreptio*, although it may be difficult to prove, would qualify if the intention "to bring about a marriage by fraud [is] effective."²⁹

The question of the use of c. 1098 in the adjudication of cases involving alcoholism presents a number of issues. First, can c. 1098 be used for marriages contracted prior to November 27, 1983? Since there is no clear precedent in Rotal jurisprudence for the application of the canon to such cases, it would be advisable to model Rotal practice and join the issue on some other ground (error of quality of person directly and principally intended, grave lack of discretionary judgment, incapacity to assume) and use evidence for *dolus* as corroboratory or supplementary evidence.³⁰ Second, an alcoholic may be fully aware that

²⁷The previous Code of Canon Law also distinguished between *subreptio* and *obreptio*. Canon 42: "Reticentia veri seu subreptio ..." "Nec obstat expositio falsi, seu obreptio ..."

²⁸See c. BURKE, 25 October 1990, pp. 236-237.

²⁹J. MC AREAVEY, *The Canon Law of Marriage and the Family*, Maynooth, Ireland, Four Courts Press, 1997, p. 113.

³⁰See JOHN PAUL II, Allocation to the Roman Rota, 26 January 1984, in WOESTMAN, *Papal Allocutions to the Roman Rota 1939-1944*, p. 185: "...the expert jurisprudence of the Rota could make a valuable contribution ... [to] the further clarification of c. 1098 ... These important determinations, ... should serve as direction and guidance to all the

his/her prospective partner would not consent to marriage with an alcoholic and thus deceive in order to procure consent. In such a case, the probability is high that adjudication would examine the consents of both parties³¹ and could result in an affirmative decision. Third, there is no doubt that alcoholism can, by "its very nature, [...] seriously disrupt the partnership of conjugal life." The physical and personality changes in the organism and the deterioration in familial, social, occupational and interpersonal areas of life that can accompany alcohol abuse and alcohol dependence result in serious problems for the alcoholic and his/her family (Chapters One and Two). The more serious phases, types and states of alcoholism, injurious to conjugal life, may not be easily concealed from a prospective spouse except in cultures where marriages are arranged and during so-called "long distance" courtships. In these cases, deception by a third party may play a more significant role in adjudication. In brief, when a case involving alcoholism is adjudicated on the basis of c. 1098, an affirmative decision would require proof that real deception occurred, that the deception was perpetrated to obtain consent, that the alcoholism existed at the time of consent and that involvement with alcohol was sufficiently intense "to seriously disrupt the partnership of conjugal life."

The application of Burke's criterion that "the concealed bad quality must relate to the essential aspects of the married consortium"³² would require a determination of what these

tribunals of the particular churches...". The Rota has always been regarded by canonists as a source and guide for matrimonial jurisprudence. However, the Code itself does not contain a principle of precedence and the principles of jurisprudence employed in a given case are binding only on the parties involved in the case.

³¹See GRESSIER, "La nullité du mariage," p. 343. See also c. BURKE, 25 October 1990, p. 236.

³² See c. BURKE, 25 October 1990, p. 238.

“essential aspects” are. With the exception of Burke (who does not agree that the *bonum coniugum* is an essential juridic aspect),³³ most canonists would claim that these essential aspects include, at least, the essential obligations of marriage as expressed in the four *bona*.³⁴ Although a cause/effect relationship between alcoholism and failure to provide for the *bonum fidei* is not firmly established in the literature, the literature does identify alcoholism as a potential cause of separation and divorce (failure to provide for the *bonum sacramenti*). The information presented in Chapter Two suggests that alcoholism in a family can create considerable stress for the non-alcoholic spouse and the children. The *bonum coniugum* and the *bonum prolis* are thus compromised by the quality alcoholism in a spouse/parent.

A just and equitable judgment, in certain marriage cases involving alcoholism, may require that adjudication be grounded in c. 1098 in preference to other canons (e.g., cc. 1095, 1097, 1102).

In specific cases the choice of c. 1102 as a ground for adjudication may not be immediately obvious. Wrenn explains:

[...] a man [who] marries an alcoholic woman ... may allege that he was deceived or that he had placed a condition against marrying such a woman. Circumstances, however, may suggest one or the other to be the preferable approach. For example, when deceit is high (the woman has completely concealed her problem) and awareness is low (he has no idea she has a

³³C. BURKE, “Some Reflections on Canon 1095,” in *ME*, 117 (1992), pp. 134-135.

³⁴See MENDONÇA, “Consensual Incapacity for Marriage,” p. 558. See also IDEM, “The Theological and Juridical Aspects of Marriage,” pp. 269-270; JOHN PAUL II, Allocution to the Roman Rota, 27 January 1997, in *Origins*, 26 (1996-1997), p. 597: “Marriage certainly has an essential nature described in c. 1055, which pervades the entire teaching concerning marriage, as can be seen in the concepts of ‘essential property’, ‘essential element’, ‘essential rights and obligations of marriage’, etc.”

problem) then ERROR is the likely ground. But where awareness is high (he has strong suspicions that she is alcoholic) and deceit is low (she has indicated to him that she drinks too much) then it would seem preferable to handle the case on the grounds of a condition.³⁵

The following section focuses on c. 1102 as a relevant ground for adjudication.

5.1.3 - Canon 1102 and alcoholism

Canon 1102 refers to three types of conditions: past, present and future. A condition (in this context) can be described as: "a circumstance attached to the marriage on which the validity of the marriage depends."³⁶ The condition is placed through an implicit or explicit positive act of the will and this act is based on an uncertainty about a valued circumstance. A condition, in the strict sense, is a circumstance based on an uncertain future event. With a future condition, the validity of consent is suspended until the circumstance is verified. A past/present condition or a condition in the broad or improper sense does not suspend the existence of the marriage. In both future and past/present conditions the efficaciousness of the marital will is subordinated to the condition. An understanding of the concept of condition is facilitated by distinguishing it from a mode (an obligation accepted by the other party), a cause (a reason for the marriage), a demonstration (an expression of a quality), and a postulate/prerequisite/presupposition (a previous circumstance upon which the decision to marry was dependent).³⁷

³⁵ WRENN, *Annulments*, p. 161.

³⁶Ibid., p. 155.

³⁷Ibid., pp. 158-159.

The juridical significance of the three conditions mentioned in c. 1102 is somewhat different in *CIC/17* (c. 1092), the *CIC/83* (c. 1102) and the *CCEO/90* (c. 826). Canon 1092 stated:

A condition once placed and not revoked:

1° If it is a condition regarding a future event which is necessary or impossible or immoral but not contrary to the substance of marriage, it is to be considered as not having been made;

2° If it concerns the future and is contrary to the substance of marriage, it makes the marriage invalid;

3° If it concerns the future and is licit, it suspends the validity of the marriage;

4° If it concerns the past or the present, the marriage will be valid or not according as the matter concerning which the condition is made, exists or not.³⁸

Canon 1102:

§1. Marriage based on a condition concerning the future cannot be contracted validly.

§2. Marriage based on a condition concerning the past or the present is valid or invalid, insofar as the subject matter of the condition exists or not.

³⁸T.L. BOUSCAREN, A.C. ELLIS and F. N. North, *Canon Law: A Text and Commentary*, 4th ed., Milwaukee, The Bruce Publishing Company, 1966, pp. 566-567. The original Latin reads:

“*Conditio semel apposita et non revocata:*

1° Si sit de futuro necessaria vel impossibilis vel turpis, sed non contra matrimonii substantiam, pro non adiecta habeatur:

2° Si de futuro contra matrimonii substantiam, illud reddit invalidum;

3° Si de futuro licita, valorem matrimonii suspendit;

4° Si de praeterito vel de praesenti, matrimonium erit validum vel non, prout id quod conditioni subest, existit vel non.”

§3. The condition mentioned in §2 cannot be placed licitly without the written permission of the local ordinary.³⁹

CCEO c. 826 states:

Marriage based on a condition cannot be validly celebrated.⁴⁰

Under the 1917 legislation, future licit conditions did not invalidate. However, present legislation does not allow marriages to be contracted under any future conditions. All future conditions (impossible, necessary, immoral, illicit, contrary to the substance of marriage, not contrary to the substance of marriage) attached to consent render consent invalid. L. Robitaille states that, with this change in legislation, “the Church left tradition behind and legislated in favour of the public good.”⁴¹ The *coetus* dealing with the legislation on marriage was confronted with the task of achieving a legislative balance between “marriage at any cost” and “the certainty of the bond.”⁴² Although the reasons for this legislative change are not officially recorded, it can be hypothesized, that for the *coetus*, a disharmony may have existed between the theology of marriage embedded in *Gaudium et*

³⁹§1. Matrimonium sub condicione de futuro valide contrahi nequit.

§2. Matrimonium sub condicione de praeterito vel de praesenti initum est validum vel non, prout id quod condicioni subest, existit vel non.

§3. Condicio autem de qua in §2, licite apponi nequit, nisi cum licentia Ordinarii loci scripto data.”

⁴⁰*Code of Canons of the Eastern Churches*, Latin-English Edition, Washington, DC, Canon Law Society of America, 1992, p. 403. The original Latin reads: “Matrimonium sub condicione valide celebrari non potest.”

⁴¹L. ROBITAILLE, “Conditioned Consent: Natural Law and Human Positive Law,” in *SC*, 26 (1992), p. 94.

⁴²*Ibid.*, p. 95.

spes, c. 1055, c. 1056, and c. 1057 and even licit future conditions. Is consent ever present when, through a positive act of the will, an individual enters a dissolvable union in the event of a condition not being fulfilled? Is injustice involved when individuals are exposed, for an indeterminate period of time, to an uncertain juridical and moral status? These questions may well have prompted the *coetus* to recommend the abandonment of the 1917 Code's provisions for future licit conditions.

The fact that marriages with future conditions are disallowed does not mean that such marriage will not be attempted in the future. If it can be demonstrated that a true future condition was posited in a marriage contracted after November 27, 1983, the marriage will be declared null. Since most authors consider c. 1102, §1 a norm of positive human law, marriages contracted prior to November 27, 1983 will be adjudicated on the basis of c. 1092.⁴³

Canon 826 of the *CCEO* introduces a more stringent change by posting an incompatibility between any type of conditioned consent and validity. In his comments on c. 1102 of *CIC/83*, Örsy writes that "it is nearly impossible to reconcile it with the nature of the marriage covenant" and "a simple and sound way to handle the problem would be to deny any effect to a conditional consent, whether the condition concerns the future, the past or the present."⁴⁴ The Oriental legislation in c. 826 seems to reflect this view. A criticism that could

⁴³See L. ROBITAILLE, "The Ground of Conditioned Consent," in *Forum*, 8 (1997) 1, p. 99. See also A. LEUZZI, "La condizione del consenso matrimoniale canonico: dalla disciplina del 1917 a quella attuale," in *Apollinaris*, 66 (1993), pp. 419-420.

⁴⁴ÖRSY, *Marriage in Canon Law*, pp. 146-147. See also P. GAFANELL, "Il matrimonio condizionato durante la codificazione pio-benedettina fonte del c. 826 *CCEO*," in *IE*, 7 (1995), p. 617. This author claims that one cannot subordinate marriage to the fulfillment

be levelled at c. 826's stringency is that it legislates beyond what is advisable according to natural law. On the other hand, the marital covenant is not merely a natural law contract. It is a sacred covenant through which individuals work out their salvation. The Church has always claimed the right to legislate for the sacraments. It undoubtedly has the right to determine (without violating the natural law) how the natural law will be applied and interpreted in the sacramental realm.

Canons 1092 and 1102 meet on the issue of past and present conditioned consent. A past or present condition subordinates the validity of the marriage to an uncertain circumstance which has already occurred or is in process at the time of consent and is at least subjectively grave for the contractant. For the contractant, the circumstance is more important than the marriage itself. If the circumstance exists, consent is valid. If it does not exist, consent is invalid. An individual can validly but not licitly attach a condition to consent without the written permission of the local ordinary.⁴⁵

The nature of alcoholism is such that complexity may be added to the proofs required in the application of c. 1102 to cases involving alcoholism. It can be stated that serious involvement with alcohol can be an objectively and subjectively grave circumstance in which a future, past or present condition can be based.

In general, proof requires the determination that a condition was explicitly or implicitly posited through a positive act of the will, that the will to place the condition was

of a condition.

⁴⁵The provision contained in c. 1102, §3 is meant to protect personal freedom to condition consent and also to limit the possibility of invalid marriages through the supervision of the local ordinary.

actual or virtual (placed before and existed at the time of consent), that the condition was not revoked, that the placing of a condition was precipitated by some element of doubt and that the validity of the marriage was either explicitly or implicitly subordinated to the conditioning circumstance. Stankiewicz summarizes proof requirements as follows: "proof of an alleged condition, especially a past or a present condition involves three things: a) that the condition itself have been placed; b) that it was not revoked; c) that it was not purified, that is to say, fulfilled."⁴⁶ Marriages, involving future conditions, contracted prior to November 27, 1983 are adjudicated according to c. 1092 (*CIC/17*). A contractant could have, for example, conditioned consent on a spouse's not becoming an alcoholic or on the continuation of a spouse in a recovery program. The following examples describe such possibilities. A contractant, as the adult child of an alcoholic, is subjectively convinced that alcoholism is a grave objective reason for conditioning consent. Although the prospective spouse's behaviour at the time of the marriage does not warrant the diagnosis of alcoholism, his/her social environment and family history precipitate some doubt. The contractant's developmental experiences and the prospective spouse's previous and present experiences combine to form, in the contractant, a somewhat general doubt which does not exclude an implicit positive act of the will and which is virtually present at the time of consent.

In the above case, the judge may be required to exclude a mode, a cause, a postulate/prerequisite/presupposition and thus determine the actual will of the contractant. Such a future condition could also possibly be categorized as an impossible condition in light

⁴⁶c. STANKIEWICZ, 30 January 1992, pp. 194-208. English translation adapted from L. WRENN, *Law Sections*, Washington, DC, Canon Law Society of America, 1994, p. 80.

of the nature of alcoholism. Individuals usually do not decide to become addicted to alcohol. The defense mechanisms of denial and rationalization, which play such a major role in the emergence of the disorder, can decrease an individual's conscious awareness of the impact of alcohol abuse. Whether or not an individual can realistically promise not to become an alcoholic is open to question. In the above case, it could be determined that the other party made a promise in the present. The contractant's later claim that "I would not have married had I known he/she would become an alcoholic" would probably be categorized as a *voluntas interpretativa*.

It could also occur that a contractant conditioned consent on a prospective partner's remaining in a recovery program. A contractant could accept the AA philosophy of "once an alcoholic always an alcoholic." The contractant could believe that recovery for all alcoholics is a life long process and that it is facilitated through contact with other alcoholics. Withdrawal from a recovery program could be interpreted as a serious threat to sobriety and an unwillingness to assume responsibility for one's own maturational process. In this case, the contractant's uncertainty would be based in an understanding of alcoholism that is not necessarily verified by research. The contractant's knowledge and life experiences could transform "continuation in recovery" into a *sine qua non* for consent. In this case, the judge would have to develop an understanding of the contractant's will at the time of consent and the relationship between the desired circumstances (continuation in recovery) and the consent itself. Although defining "withdrawal from recovery" could be more than challenging, a significant area of investigation would be the common life after discontinuation in recovery programs. What was the quality of the contractant's commitment following the non-

fulfillment of the condition? Did common life immediately cease or deteriorate significantly?⁴⁷ Did the contractant feel no longer bound by the union? In any event, Robitaille claims that very few cases are adjudicated on the ground of a future licit condition.⁴⁸

Alcoholism could be a past or present circumstance in which a condition might readily be based. A contractant may, for example, condition consent on whether or not a prospective spouse was and/or is an alcoholic. An adult child of an alcoholic or an individual familiar with alcoholics may be able to detect certain behavioural patterns (the need to control, insecurity, low self-esteem, denial, rationalization) characteristic of many alcoholics and recovering alcoholics. This same contractant may accept the AA belief that there is no actual recovery from alcoholism, only a daily reprieve contingent upon the individual's spiritual condition. Such a contractant believes that an individual who was an alcoholic in the past is an alcoholic in the present. Such a contractant may not be interested in level and quality of recovery, may be uncertain about the other person's alcoholic/non-alcoholic status and may wish to protect himself/herself by conditioning consent. If a discovery of past or present alcoholism is made later, the contractant may believe that the marital bond never

⁴⁷See WRENN, *Annulments*, p. 160. Wrenn recommends caution in the application of the criterion. The fact that common life is not terminated does not necessarily mean that the contractant has not placed a true condition. There may be many legitimate reasons for the continuation of common life, such as, finances, children, the reputation of the other party.

⁴⁸ROBITAILLE, "Conditioned Consent," p. 88: "... one has to look extremely hard to find any cases of future, licit, contingent conditions, which are considered as such."

existed. A declaration of nullity in this case could be relatively easy if the condition was explicitly made with the permission of the local Ordinary.

Although the adjudication of cases on the basis of conditioned consent may be a difficult and time consuming process, difficulty in application cannot be a justification for not joining the issue on the most appropriate ground. If the facts of a case in a marriage which was contracted prior to November 27, 1983 indicate that a future licit condition was posited, then an investigation of the alleged true condition under c. 1092 (*CIC/17*) is warranted. Although some apprehension remains about an incompatibility between the total giving of the self and the unconditional acceptance of the other in marriage and the positing of past/present conditions, the Church, through c. 1102 (*CIC/83*), legislates to respect and protect the rights of the innocent party.

The figure of condition is distinguished from other figures by the fact that the person wants marriage with a specific circumstance, by the fact that the person is uncertain about the existence of this valued circumstance and by the fact that the person is aware of his/her uncertainty. Because cc. 1097, 1098 and 1102 share some characteristics, the distinctiveness of c. 1102 does not remove all ambiguity in the choice of the most appropriate ground in specific cases.⁴⁹

⁴⁹Canons 1097 and 1098 are commonly considered to be legal expression of defects of the intellect while c. 1102 is a legal expression of a defect in the will. The difficulties encountered in determining the most accurate ground in particular cases may be reflective of the fact that the intellect and the will are not existentially distinct.

Error of quality and conditioned consent could both be alleged in a specific case. In such cases, Funghini recommends that error of quality be investigated initially.⁵⁰ If the absence of alcoholism is a willed condition *sine qua non*, then it is a case of conditioned consent. Canon 1097 probably would not be the ground of choice, in this case, because an individual in error would think that freedom from alcoholism does exist. The individual who conditions consent knows that he/she is in doubt. The person, in this case, reduces the circumstance (non-alcoholism) to a quality and subordinates consent to the quality. In c. 1097, consent is not subordinated to error.

In conclusion, the foregoing section discussed the feasibility of using cc. 1097, 1098 and 1102 as grounds for the adjudication of cases involving alcoholism. With c. 1097, non-alcoholism must be a quality directly and principally intended. The use of c. 1098 would require that alcoholism be denied or concealed in order to procure consent, and for c. 1102 the consent could be subordinated to absence of alcoholism. Although any one of these canons could be the most appropriate ground in a specific case, these canons may have particular relevance for arranged marriages, marriages by proxy and marital contracts subsequent to "long-distance" courtships.

The adjudication of marriage cases and the imposition of prohibitions are distinct juridic acts. However, some grounds of adjudication (c. 1095, 3° and c. 1098) may be more frequently followed by an imposition of a prohibition than others. The ground of adjudication, although not a criterion for the decision to impose a *vetitum*, may, nevertheless,

⁵⁰c. FUNGHINI, 24 February 1988, in *SRR Dec.*, 80 (1988), p. 142.

influence the judge's decision. The imposition of prohibitions is the subject matter of the following section.

5.2 - Prohibitions on future marriages

The imposition of a *vetitum* may appear to be at variance with the vigorous defense by the magisterium of a person's right to marry. Pius XII, in his 3 October 1941 allocution to the Roman Rota, emphasizes this right in the following words:

In the first place as regards to the right to marriage, our glorious predecessors Leo XII and Pius XI taught that "no human law can take from a human being the natural and primordial right to marriage." Truly this right, since it was given to humans immediately by the Author of nature, the Supreme Lawgiver, cannot be denied to anyone without proof that the person has either freely renounced it or is incapable of contracting marriage because of some defect of mind or body.⁵¹

Pius XII's theology of marriage, as a non absolute right to marry, is given legal expression in c. 1058 which states: "All can contract marriage who are not prohibited by law." The right to marry is a right to marry lawfully. Prohibitions, that stand "in the way of [the] valid and lawful celebration" of marriage (c. 1066), can originate with the personal defects of the contractants and are externally imposed for the protection of the dignity of matrimony and for the welfare of the individuals involved.

Prohibitions in the context of an affirmative decision for nullity are the subject matter for this section. Other related issues and concepts will be discussed, such as the meaning of prohibitions, their impositions and removal and their value to the Church and the involved parties.

5.2.1 - The *vetitum* and the *monitum*

⁵¹See *AAS*, 33 (1941), p. 422. English translation from *CLD*, vol. 2, p. 455.

The present meanings of the concepts of *vetitum* and *monitum* are shaped by their histories. The *vetitum*, in particular, has a complex and lengthy history. Although this history has its own interest, it does not have particular relevance for this study.⁵² There are, however, two relatively recent historical publications that have a significant impact on current *vetitum/monitum* usage. The first is the Instruction *Provida mater ecclesia* promulgated by the Sacred Congregation for the Discipline of the Sacraments in 1936 and the second is E. Del Corpo's 1969 work on procedures. *Provida mater*, in Article 225, focuses primarily on the necessity of recording an affirmative decision together with any "prohibitory clauses" in the appropriate registers. It reads as follows:

§1. The Ordinary of the aforementioned place is obliged to command as soon as possible the rector of the parish in which the celebration of the marriage has been entered in the parish register, that he enter the record of the sentence of nullity and of any prohibitory clauses that may perchance have been determined upon, as for example in case of impotency [...].

§2. However, the rector of the parish is obliged to record in the aforementioned registers the sentence of nullity and any prohibitory clause that may have been decreed, and if either or both consorts were baptized elsewhere, to apprise the pastor or pastors of the locality of baptism of the judicial sentence and of the prohibitory statutes that may have been decreed, so that these pastors may enter the record in their baptismal registers.⁵³

⁵²See J. HOPKA, "The *vetitum* and the *monitum* in Matrimonial Nullity Proceedings," in *SC*, 19 (1985), pp. 359-372; J. LUCAS, "The Prohibition Imposed by a Tribunal: Law, Practice, Future Development," in *The Jurist*, 45 (1985), pp. 589-596; R. GUIRY, "Canonical and Psychological Reflections on the *vetitum* in Today's Tribunal," *ibid.*, 49 (1989), pp. 194-196.

⁵³English translation from HOPKA, "The *vetitum* and *monitum* in Matrimonial Nullity," p. 368. Italics in original. The Latin original is in *AAS*, 28 (1936), pp. 357-358.

Del Corpo is interested in the nature of prohibitions and their imposition. In his view administrative and judicial *vetita* are precepts imposed by a competent ecclesiastical authority. An administrative *vetitum* can be imposed by the local Ordinary, the Roman Curia and the Supreme Pontiff. Judicial *vetita* are imposed by ecclesiastical tribunals.⁵⁴

The judicial *vetitum* is personal or real, apostolic or non-apostolic (Roman Curia or an inferior tribunal), simple or invalidating (renders a future marriage illicit or invalid), absolute or relative (no conditions for removal or conditions for removal).⁵⁵ Del Corpo also claims that a *vetitum* following judicial proceedings is a judicial act (not administrative), that only the Holy See can impose invalidating *vetita*, that absolute *vetita* can be imposed only if certain, absolute and perpetual incapacity is proven with moral certitude, that *vetita* should be removed by judicial procedures with the intervention of the promoter of justice, and that the *vetitum* itself and its type can be appealed.⁵⁶ Del Corpo clarifies the difference between a *vetitum* and *monitum* by stating that a *monitum* is an administrative act, never renders a future marriage invalid or illicit and is always temporary.⁵⁷ The pastoral information that a *monitum* conveys to involved persons is: the evidence suggests that the same sources of invalidity may be present and, therefore, the preparedness for a future marriage should be

⁵⁴See E. DEL CORPO, *Selectae quaestiones processuales canonicae in causis matrimonialibus*, Romae, Officium Libri Catholici, 1969, pp. 50-51.

⁵⁵See HOPKA, "The *vetitum* and the *monitum* in Matrimonial Nullity," p. 369.

⁵⁶*Ibid.*, pp. 370-371.

⁵⁷*Ibid.*, p. 370.

verified. The *monitum* need not be recorded in parochial registers, is not a canonical institute in the strict sense, and does not have canonical effects.

In brief, a *vetitum* is a canonical institute with a canonical effect and is, according to its source, executed through an administrative act or a juridical act. When it is an administrative act, it will most likely be expressed in the form of a precept with the force of law for the person involved (c. 49). The *vetitum*, as a judicial act, results from judicial proceedings and is imposed by a judge or college of judges. In the context of marriage nullity cases, it prohibits (but does not invalidate) a future marriage until certain conditions are fulfilled. A *monitum* is simply a warning that preparedness for marriage should be verified.

5.2.2 - The imposition of prohibitions

A *vetitum* can be imposed by a competent ecclesiastical authority. An administrative *vetitum* can be imposed by the Supreme Pontiff, the Roman Curia and local Ordinary (c. 134). As an administrative act, it should be implemented according to the law (cc. 35-85). If it is discovered that something “stands in the way of [the] valid and lawful celebration” of a marriage (c. 1066), “the local Ordinary can in a specific case forbid [the] marriage ... only for a time, for a grave reason and while that reason persists” (c. 1077 §1). The “for a time” of this canon presents a problem for the local Ordinary when the reason is certain, absolute and permanent. If the reason is certain, absolute and permanent (c. 1084), “for a time” could be interpreted to mean “while that reason persists” and an absolute *vetitum* could be imposed. Ordinarily there will not be a change in the reason. In the event that the prohibition is appealed and with appropriate changes in the reason, the prohibition could be removed or modified to a relative *vetitum*. The removal or modification would be expressed through an

administrative act. The right of anyone, capable by law, to enter marriage is protected by the fact that the attachment of "an invalidating clause" to a prohibition is reserved to "the supreme authority in the Church" (c. 1077, §2).⁵⁸

A non-invalidating *vetitum* can be imposed by an ecclesiastical tribunal when certain problems still exist which could invalidate a future attempted consent. The imposition is categorized as a judicial act rather than an administrative act because it originates with a judge or college of judges.⁵⁹ Since a *vetitum* inhibits the right to marry temporarily, it should be imposed only for a grave reason and it should be motivated from the reasons given for the declaration of nullity. In the absence of a diocesan policy, it could contain a statement of willingness, on the part of the tribunal, to discuss with the pastor of, and the parties to an anticipated marriage, the conditions that should be fulfilled before the *vetitum* is removed.

5.2.3 - Criteria for the imposition of tribunal prohibitions

⁵⁸By divine law a bishop may have the power to attach an invalidating clause. He cannot exercise this power however because the supreme authority in the Church has, by ecclesiastical law, reserved this power to himself.

⁵⁹The Rota does not impose *monita* possibly because it is a judicial body rather than an administrative one and the imposition of a *monitum* would be categorized as an administrative act. Can non-administrative inferior tribunals impose *monita*?

The 1983 Code does not establish criteria for the imposition of *vetita*.⁶⁰ The laws that govern Rotal procedures do not refer to *vetita* and *monita*.⁶¹ The Rota does, however, have at least tacit approval to impose prohibitions since it regularly does so without intervention from the Apostolic Signatura and/or the Roman Pontiff. The silence of the lawgiver regarding criteria may reflect a respect for cultural and regional differences and may imply that canonical writers and jurisprudence should develop the necessary criteria. The literature on *vetita* provides some information on possible criteria.

In his study of Rotal sentences published in *Monitor ecclesiasticus* between 1963 and 1983, Hopka found that Rotal judges imposed absolute *vetita* on cases involving impotence and severe psychoses and relative *vetita* on cases involving emotional disorders, less severe psychoses, a total inability to educate offspring and simulation.⁶² While this study may be limited, it does provide some information about Rotal practices.

In addition to Rotal practices, the literature records the results of surveys conducted on the use of prohibitions by tribunals in particular churches. J. Lucas submitted a

⁶⁰Canon 1684, §1, states that a new marriage can be entered "as soon as the decree or the second judgment has been notified to them, unless there is a prohibition of this appended to the judgment or decree itself, or imposed by the local Ordinary." Canon 1685 governs the procedure for recording the decree of nullity of the marriage and of any prohibition imposed.

⁶¹See PUIS XI, "Normae Sacrae Romanae Rotae Tribunalis," in *AAS*, 26 (1934), pp. 449-491. See also JOHN PAUL II, "Normae Sacrae Romanae Rotae Tribunalis," *ibid.*, 74 (1982), pp. 490-512; for the most recent Norms governing the Roman Rota, see "Normae Romanae Rotae Tribunalis," *ibid.*, 86 (1994), pp. 508-540.

⁶²HOPKA, "The *vetitum* and *monitum* in Matrimonial Nullity," pp. 377-378.

questionnaire to the five tribunals in the state of Illinois.⁶³ His focus was on the psychological effects of a *vetitum* and the discrepancy between these effects and the *vetitum*'s purpose rather than on criteria for imposition and removal.⁶⁴

Another survey attempted to study responses from a representative sample of 37 tribunals in the United States.⁶⁵ Interpretation of results from this study is obstructed by the fact that several tribunals do not adhere to precise definitions of *vetitum* and *monitum*, use the terms interchangeably, substitute other terms ("restriction," "condition," "counselling requirements") and categorize prohibitions into degrees of severity. Nevertheless, certain criteria appear to be in fairly common usage in these tribunals. These criteria include: the judge's opinion, the judge's decision in consultation with tribunal personnel (defender of the bond, *peritus*, advocate), severe interpersonal relationship problems, a consistent pattern of immature and irresponsible behaviour, emotional instability, multiple marriages, the absence of Christian values (the *bona* of marriage), persistent infidelity, addictions (alcohol and drugs), beginning a relationship shortly after a previous one ended, physical abuse and a sociopathic personality.⁶⁶

⁶³The content of this questionnaire can be found in LUCAS, "The Prohibition Imposed by a Tribunal," pp. 616-617.

⁶⁴*Ibid.*, pp. 605-616.

⁶⁵HOPKA, "The *vetitum* and *monitum* in Matrimonial Nullity," pp. 384-395.

⁶⁶*Ibid.*, pp. 388-390.

An earlier survey by C. Guarino and W. Varvaro was more expansive than the Hopka study. These researchers sent questionnaires to every tribunal in the United States.⁶⁷ The reasons revealed in this study for imposing a *vetitum* were in substantial agreement with the reasons listed by Hopka. Additional reasons given were: non-support of children from a first marriage, possible scandal from a second marriage, homosexuality, inhibited sex drive, contempt for the tribunal process, simulation, radical incompatibility and perjury.⁶⁸ In an attempt to establish a common policy concerning the *vetitum* in the tribunals of Great Britain and Ireland, the Canon Law Society of these countries adopted a resolution for an experimental period of one year. This resolution contained eight procedural directives; one of these elements contains reasons for imposing a *vetitum*. It reads as follows:

Any such Tribunal may impose a *vetitum* in any case in which, for reasons of either a juridical or a pastoral nature, it considers this prohibition necessary or appropriate. Such cases would comprise not only those of a psychiatric or psychological nature (can. 1095) but also inter alia cases of simulation (can. 1101), impotence (can. 1084), deceit (can. 1098), condition (can. 1102), force or grave fear (can. 1103), the neglect of natural obligations (can. 1071, n. 3).⁶⁹

The extent to which the resolution was implemented was assessed the following year. These results were reported:

A significant number [of the tribunals] stated that it is neither the belief nor the practice of the Tribunal that it is the responsibility of the first instance Tribunal to impose a *vetitum*. Rather, they leave all such actions to the

⁶⁷See C. GUARINO and W. VARVARO, "Survey on the Use of the *vetitum*," in *CLSA Proceedings*, 45 (1983), pp. 285-289.

⁶⁸*Ibid.*, pp. 285-286.

⁶⁹A. MCGRATH "The *vetitum* in Marriage Nullity Cases: A Review of Practice in the Tribunals of Great Britain and Ireland," in *CLSGBI Newsletter*, 92 (1992), p. 28.

Tribunal of second instance ... Most [Tribunals] responded that the Resolution and its implementation made little or no effective difference to the day-to-day practice of the tribunal.⁷⁰

Given these comments, it is difficult to determine the precise conditions that result in the imposition of *vetita* in the tribunals of Great Britain and Ireland. The resolution accurately recommends that the grounds for adjudication can provide significant information for the decision-making process involved in the imposition of prohibitions.

Practices in the tribunals of New Zealand and Australia concerning prohibitions were also studied during the present decade.⁷¹ The questionnaire used in this study was basically the same as Hopka's questionnaire. The criteria, described in the present study, for the imposition of prohibitions in Australia and New Zealand were "remarkably similar" to the United States criteria reported by Hopka.⁷² More specifically, personality disorders, behaviours grossly contrary to the four *bona*, substance abuse and physical abuse were designated as conditions worthy of a prohibition.

This review of criteria used in various tribunals does not reveal definitive guidelines for the imposition of prohibitions. This is, possibly, fortuitous since the principles of justice and equity may demand that the judge be allowed flexibility. In addition, every case must be assessed according to its unique characteristics and on its own merits. A common theme, however, does emerge from this study. This theme is: when there is a moral certitude that

⁷⁰*Ibid.*, pp. 31, 33.

⁷¹See A. DEWHIRST, "The *vetitum* and *monitum* Down Under: A Necessity, A Help or A Hindrance?" in *CLSGBI Newsletter*, 105 (1996), pp. 41-64.

⁷²*Ibid.*, p. 47.

a serious psychic instability persists and/or an anti-Christian attitude towards marriage exists, there is moral certitude that a future consent will be invalid. A prohibition, therefore, is warranted by the dignity of the sacrament of marriage and for the welfare of the principals. The prohibition should include the reasons for its imposition as contained in the arguments used to justify an affirmative decision.

5.2.4 - The removal of prohibitions

Since “only the supreme authority in the Church can attach an invalidating clause to a prohibition” (c. 1077, §1), all other imposed *vetita* and *monita* are not invalidating and can be removed by the competent ecclesiastical authority. Except in those dioceses where the terms *vetitum* and *monitum* are used interchangeably and do not retain their precise meanings,⁷³ the *monitum* is not a prohibition in the strict sense, need not be removed through an administrative act and its destiny should be assigned to the discretion of the pastor responsible for the proposed marriage.⁷⁴ The practice of requiring a contractant, on whom a *monitum* is imposed to consult “with the Ordinary of the place where the marriage is to occur” could be challenged.⁷⁵

⁷³See HOPKA, “The *vetitum* and *monitum* in Matrimonial Nullity,” pp. 384-385.

⁷⁴See DEWHIRST, “The *vetitum* and *monitum* Down Under,” p. 44.

⁷⁵The London Branch Office of the Toronto Regional Tribunal imposes a *monitum* with the following words: “I further direct that a *monitum* be placed on the Respondent, L.H., so that she may not enter into marriage in the Catholic Church without prior consultation with the Ordinary of the place where the marriage is to occur.”

The practice of the Rota regarding the removal of *vetita*, as described in Hopka's review of Rotal sentences,⁷⁶ is a model that could be imitated by other tribunals. The Rota imposes absolute *vetita* without attaching conditions⁷⁷ and relative *vetita* with their removal reserved to itself or to a local tribunal or to the local Ordinary or his delegate.⁷⁸

In assigning the removal of *vetita* to the local ordinary or his delegate, the Rota characteristically does not attach conditions or attaches conditions to be fulfilled in the presence of the local Ordinary (promises) or explicitly states that the evaluation of one or more experts is a condition for the removal of the *vetitum*.⁷⁹

As stated above, with a mandate from the diocesan Bishop (c. 391) local tribunals could adhere to the Rotal model. Local tribunals could, with proper authorization, reserve

⁷⁶HOPKA, "The *vetitum* and *monitum* in Matrimonial Nullity," pp. 378-379.

⁷⁷Conditions are not attached because it is presumed that the prohibition will not be removed. However, it can be removed or modified. See *c. FILIPIAK*, 21 April 1961, in *SRR Dec.*, 53 (1961), p. 195. In this sentence Filipiak imposed an absolute *vetitum*. This imposition was appealed and changed to a relative *vetitum* *c. BRENNAN*, 22 December 1962. Brennan's decision is cited by J. LUCAS in *The Function of the Tribunal in Second Marriages: The Question of the Prohibition*, Rome, 1979, p. 45 (unpublished licentiate thesis).

⁷⁸Would the Rotal removal of a *vetitum* reserved to itself be categorized as a judicial or an administrative act? The Rota apparently perceives itself solely as a judicial body and may not perceive itself as possessing the authority to act administratively in the executive removal of a *vetitum* (see HOPKA, "The *vetitum* and *monitum* in Matrimonial Nullity," p. 376). Del Corpo maintains that the removal of a *vetitum* is a formal judicial procedure to be carried out by the judge who imposed it (see DEL CORPO, *Selectae quaestiones processuales canonicae*, pp. 60-65).

⁷⁹See HOPKA, "The *vetitum* and *monitum* in Matrimonial Nullity," pp. 378-379.

the removal of relative *vetita*⁸⁰ to itself or to the local Ordinary. Cases requiring any type of special input from the tribunal (e.g. psychic anomalies) could be reserved to the tribunal for its supervision. When the tribunal judges, with moral certitude, that the conditions that would cause an invalid consent no longer exist, it could then, through a judicial act, remove the *vetitum*. The authority to remove *vetita* could be delegated to the tribunal. On the other hand, cases wherein the *vetitum* was precipitated because the judge was morally certain that the contractant would not enter the marriage according to the laws and *mens* of the Church could be reserved to the local Ordinary.

The various surveys conducted for the study of the practices in local tribunals reveal a wide variety of procedures for the removal of prohibitions. Although practice may not always correlate with understanding, in general, removal is understood to be an administrative act requiring executive authority. The responsibility for removal can rest with the diocese of the tribunal which imposed the *vetitum*,⁸¹ the diocese where the second marriage is contemplated,⁸² the tribunal,⁸³ the judicial vicar,⁸⁴ the judge who imposed it,⁸⁵ the vicar

⁸⁰Can a local tribunal impose absolute *vetita*? Since these *vetita* are not invalidating, the authority to impose them, with a reference to time limits, could conceivably be delegated to the tribunal by the diocesan Bishop.

⁸¹ See GUARINO and VARVARO, "Survey of the Use of the *vetitum*," p. 62.

⁸²*Ibid.*

⁸³See HOPKA, "The *vetitum* and *monitum* in Matrimonial Nullity," p. 392.

⁸⁴*Ibid.*

⁸⁵*Ibid.*

general,⁸⁶ or with those to whom the competent authority has delegated such power.⁸⁷ The variability in these practices probably results from practicalities and differences in available resources. A common theme present in all responses is that proof of the alleviation of the conditions that precipitated the imposition should exist before removal is contemplated. A prohibition is removed when the purpose for which it was imposed is fulfilled.

5.2.5 - The value of prohibitions

The value of prohibitions can be assessed within the context of the purposes for which they are imposed. There is general agreement that prohibitions are imposed to ensure that the sacredness of the sacrament is understood and respected, to protect an innocent third party and to prevent the subject of a prohibition from exchanging another invalid consent. The *vetitum* is at the vortex of the paradox between the Church's obligation to preserve the sanctity of marriage and the individual's right to marry validly until the contrary is proven. The intent of prohibition is therapeutic rather than punitive. Its function is to initiate a process of personal change that will culminate in the capacity to exchange valid consent. It would be less than humane to allow, passively, an individual who is incapable of valid consent to attempt marriage and subsequently be subjected to the trauma of another separation and divorce. The therapeutic value of the *vetitum* has, however, been questioned.

⁸⁶See LUCAS, "Law, Practice, Future Development," p. 604.

⁸⁷See HOPKA, "The *vetitum* and *monitum* in Matrimonial Nullity, p. 392; also see LUCAS, "The Prohibition Imposed by Tribunals," p. 604; R. OMBRES, "The *vetitum* in Marriage Nullity Cases: A Review of Practice in the Tribunals of Great Britain and Ireland," in *CLSGBI Newsletter*, 92 (1992), p. 30.

After a series of informal interviews “with the psychiatrists who are on the staff of the Brooklyn Tribunal,” Guiry concluded “that the *vetitum* procedure as it is practiced in the Brooklyn Tribunal at present is [not therapeutic but] largely useless.”⁸⁸ This conclusion is grounded in the fact that recommended interventions are unsuccessful because individuals “do not perceive that they have any problems which will contribute to the failure of the proposed marriage and hence are totally lacking in motivation when someone unexpectedly either proposes they see a mental health professional or even mandates that they do so.”⁸⁹ Guiry suggests that resistance to therapeutic intervention may be decreased and motivation to participate increased, if tribunal clients are informed from the beginning of the process that counseling may be required subsequent to a declaration of nullity and prior to marriage.⁹⁰ Guiry also believes that “if, with the best of timing and the most cordial of approaches, the person refuses out of hand to secure any kind of counseling or treatment, then reservations [following adjudication grounded in c.1095, 2° and 3°] should be withdrawn.”⁹¹ Guiry contends that this recommendation receives justification from John Paul II’s teaching that “moderate psychic illnesses do not automatically vitiate consent.”⁹²

⁸⁸GUIRY, “*Vetitum* in Today’s Tribunal,” pp. 206-207.

⁸⁹*Ibid.*, p. 205.

⁹⁰*Ibid.*, p. 207.

⁹¹*Ibid.*, p. 208.

⁹²See JOHN PAUL II, Allocation to the Roman Rota, 25 January 1988, in WOESTMAN, *Papal Allocutions to the Roman Rota 1939-1994*, pp. 197-203.

Lucas' assessment of the value of the *vetitum* essentially supports Guiry's conclusions. He states: "I personally do not believe [that the *vetitum* achieves its therapeutic goal] in most cases" and that "if a prohibition is to be used at all it must be used cautiously, prudently, and only in extreme cases when there is more than moral certitude that a future marriage would be invalid."⁹³

The conclusions of Guiry and Lucas do not receive total support from other authors. On the basis of his survey, A. Dewhirst states "that the *vetitum* and the *monitum* are indeed necessary in our tribunal work and that they are more of a help than a hindrance ...".⁹⁴ Hopka asserts that "Most tribunals report 'good experiences' with *monita* and *vetita*, often adding that much depends on the way these concepts are presented to the principals in the nullity case."⁹⁵ S. Natale presents compelling arguments in support of the value of *vetita* in the following quotation:

It is ridiculous to suggest that someone's condition has not improved and at the same time permit marriage. This is a contradiction in terms. To refuse to prohibit certain behaviours is to eliminate any psychological appropriateness from the annulment procedure. Any expression begins with certain freedoms, but if those freedoms are not acted upon on some appropriate levels, restraints must be employed. Restraint has psychological precedents. One example of restraint is confrontation. Clinicians often confront behaviour directly or indirectly. The prohibition in the form of the *vetitum* does precisely this. It stands over against something and says: No – and in so restraining often raises behaviour, attitude, etc., to consciousness. This confrontation is basically a technique which helps a person separate who he is from who he seems to be, from what he states himself to be or would

⁹³LUCAS, "The Prohibition Imposed by Tribunals," pp. 605, 612.

⁹⁴See DEWHIRST, "The *vetitum* and the *monitum* Down Under," p. 58.

⁹⁵See HOPKA, "The *vetitum* and *monitum* in Matrimonial Nullity," p. 397.

have us believe he is. Each of these components is crucial ... Limit setting and confrontation are positive contributions to a person's growth. The prohibition may be the beginning of creative and fulfilling change. In my own thinking, the annulment decision has something to do with the concern of the Christian community for truth; the prohibition against marriage may equally have something to do with the nature of love.⁹⁶

Difficulties encountered in the imposition of *vetita* and the frustrations experienced by those on whom they are imposed do not justify their removal from tribunal practice. The following observations are presented in support of *vetita* use. First, a *vetitum* can be used as a means to communicate the Church's teaching on the requirements for valid consent. Second, a *vetitum* can protect an innocent party from the vitiation of his/her right to enter a valid union. Third, the positive consequences of a *vetitum* may only become obvious to the prohibited individual after a period of time. Fourth, since the purpose of the law is "the salvation of souls" (c. 1752), the Church surely has an obligation, in charity, to inform individuals of an incapacity to enter marriage (a means of salvation) and to provide the opportunity for the development that precedes the capacity for valid consent. Fifth, as many writers state, a clear and sensitive explanation of the purpose of a *vetitum* and the possibility that it may be imposed should be presented to parties at the beginning of the nullity process. Such an explanation will individualize and enhance the value of the *vetitum*.

5.2.6 - Prohibitions and alcoholism

⁹⁶S. NATALE, "The Tribunal *vetitum*: Limit Setting and Confrontation," in *SC*, 12 (1978), pp. 367, 369.

Alcoholism is identified as a condition that could certainly justify the imposition of a *vetitum*.⁹⁷ The definitive criterion for the imposition is current data providing moral certitude that a future marital consent will be invalid. The impact that alcoholism has on the capacity to exchange valid consent must be evaluated in order to arrive at the required moral certitude. For organizational clarity, the canons under which cases involving alcoholism are most frequently adjudicated will be considered in sequence.

Canon 1095 outlines three species of incapacity. Under the first species an affirmative decision is rendered if there is lack of reason or a lack of contact with reality. The adjudication of cases of acute intoxication can be grounded in this species.⁹⁸ An individual judged incapable of valid consent due to drunkenness or a state of acute withdrawal from drunkenness at the time of the marriage could be totally capable of valid consent in the future. A judge could not ordinarily impose a *vetitum* in such cases unless there were other signs of maturational deficits of an intrapsychic origin.

The second species of c. 1095 focuses on lack of due discretion. Sufficient discretion, in this context, includes sufficient speculative knowledge of the object, sufficient evaluation of the self and the other in light of this knowledge and adequate internal freedom. When an affirmative decision is pronounced in a case involving alcoholism under this species of incapacity, the *Acta* typically contain evidence of serious deficits in the cognitive and affective

⁹⁷See HOPKA, "The *vetitum* and *monitum* in Matrimonial Nullity," p. 389. See also GUARINO and VARVARO, "Survey on the Use of the *vetitum*," p. 285.

⁹⁸See c. BURKE, 2 December 1993, p. 510: "it is evident that a state of drunkenness takes away the use of reason even in persons who are otherwise normal; therefore it induces an incapacity for giving valid consent under c. 1095, 1°."

areas of personality functioning (Chapter Two). The alcoholic's propensity for obsessional thinking, denial, rationalization, resentments, depression and self-pity may result in a judgment of an incompatibility between his/her habitual capacity for critical evaluation and internal freedom and proportionate discretionary judgment. If this same evidence is present at the time of the proposed marriage, a *vetitum* may be warranted.

With the third species of incapacity mentioned in c. 1095, an affirmative decision results from an incapacity to assume essential marital obligations because of an inability to fulfill them. The disabling psychic cause, integral to this species of incapacity, will often manifest itself in behavioural conflicts with society in general and within marriage in particular. The impact of alcoholism on the quality of behaviour compatible with the fulfillment of essential marital obligations is, therefore, the focus of judicial assessment. Alcoholism can render common life intolerable and thus separation and divorce may become inevitable. The alcoholic's irresponsibility (in social, occupational and family areas) and emotional absence can seriously impede his/her capacity to provide for the *bonum coniugum* and the *bonum prolis*. Although it must be proven in each individual case, alcohol dependency and the more serious phases (*crucial* and *chronic*), types (*gamma* and *epsilon*), states (*Wernicke-Korsakoff syndrome*, *alcohol dementia*, *alcohol paresis*, *alcohol paranoia*) of alcoholism are strikingly incompatible with the capacity to provide for the *bonum prolis* and the *bonum coniugum* (Chapter One). When these conditions are present at the time of a declaration of nullity, there is a high probability that the moral certitude required for the imposition of a *vetitum* will also be present. Although alcohol abuse and *alpha*, *beta* and *delta* alcoholism are problematic, behavioural patterns associated with them may not be

totally incompatible with the behaviour required for the minimum fulfillment of marital obligations. In these situations, the moral certitude required for a declaration of nullity and the imposition of a *vetitum* may not be present. Probably the judge's greatest challenge will arise when there is clear evidence of alcohol abuse. The level of involvement with alcohol and its impact on the particular case at hand will then be the determining factors in the decision-making process. The imposition of a *vetitum* in such cases may achieve its therapeutic goal in so far as its confrontational nature may force the alcoholic to address his/her denial, rationalization and destructive lifestyle. A *vetitum* could be the precipitant that initiates interest in recovery and the attainment of a maturational level compatible with valid consent.

When the absence of alcoholism is a condition directly and principally intended and when its discovered presence justifies an affirmative decision, the judge will impose a *vetitum* if moral certitude exists that a future consent will not be valid. Likewise when alcoholism is deceptively concealed to procure consent and when consent is conditioned on the absence of alcoholism in the past or present, the evidence in the case will determine whether or not an affirmative decision will be followed by the imposition of a *vetitum*.

The decision to impose a *vetitum* in cases involving alcoholism will be at least partially determined by the interaction between the grounds for adjudication and the severity of the condition. The imposition of a *vetitum* in cases involving alcoholism may have a unique therapeutic value. A *vetitum* may facilitate the realization that a lifestyle change is personally beneficial and necessary for a future valid consent.

To summarize, the impositions of prohibitions on future marriages has a long and complex history. The Roman Rota utilizes absolute (no conditions attached) and relative

vetita (conditions attached). It does not attach invalidating clauses to prohibitions and does not use *monita*. It may reserve the removal of prohibitions to itself, to an inferior tribunal or to the local Ordinary. Surveys conducted in the United States, Australia, New Zealand, Great Britain and Ireland have revealed a wide variety of procedures for the imposition and removal of prohibitions. Some tribunals use the terms *vetitum* and *monitum* interchangeably without any clear distinction between either their nature or their purpose. When the two terms are differentiated, the canonical status of the *monitum* often remains unclear. Since a judge must have moral certitude that a future consent will not be valid in order to impose a *vetitum*, is there any legal justification for the imposition of a *monitum*? Does a *monitum* more fittingly belong in the area of pastoral care? Although neither the *vetitum* nor the *monitum* invalidate consent, they do engender doubt regarding the right to marry in particular cases. Since the right to marry is vigorously defended by the magisterium and since the use of prohibitions has at least the tacit approval of the legislator, the intervention of the episcopal conferences for the clarification of the nature of the *vetitum* and *monitum* (judicial or administrative acts) and for the establishment of general guidelines for their imposition and removal could be highly beneficial.

Although there are some dissenting voices and some doubts concerning the right to impose prohibitions on certain individuals,⁹⁹ most tribunals surveyed report that prohibitions are valuable for the preservation of the sacredness of the sacrament of marriage, for the

⁹⁹The right of tribunals to impose prohibitions on non-Catholics has been questioned. Most tribunals surveyed report that, when warranted, they do impose prohibitions on non-Catholics in the event that such an individual should attempt a future marriage with a Catholic party.

protection of an innocent third party and for the welfare of the prohibited party. The imposition of a *vetitum* following an affirmative decision may have a unique therapeutic relevance in cases involving alcoholism.

5.3 - The advocate, procurator and curator in marriage cases involving alcoholism

The advocate, procurator and curator have unique functions to exercise in the search for truth in marriage cases. Although the adversarial method is not essential for progress in adjudication, a client's right of defense may be assured when actors achieve, through their adversative positions, a precise perception of the law and of its application. The purpose of this section is to clarify the functions of the advocate, procurator and curator in the adjudication of marriage cases involving alcoholism.

5.3.1 - The advocate's function

Canon 1483 specifies that the advocate must be at least eighteen years of age, of good reputation and be approved by the diocesan Bishop. He/she should have a doctorate in canon law and be a Catholic but need not have either of these qualifications for valid participation in the process. The diocesan Bishop must give his approval presumably because he is moderator of the tribunal and responsible for the sacraments in his particular church. L. Wrenn defines the advocate as "a person approved by the diocesan Bishop and appointed by a party to safeguard the rights of that party by arguments regarding the law and the facts."¹⁰⁰ Pius XII in his allocution to the Roman Rota, 2 October 1944, described the responsibilities of the advocate in the following words:

¹⁰⁰L. WRENN, *Procedures*, Washington, DC, Canon Law Society of America, 1987, p. 24.

Advocates assist their client in drawing up the introductory petition of the case, [...] in bringing out the decisive points of the fact which is in issue; they indicate to the client what proofs to adduce, what documents to present; suggest what testimony to bring out at the trial, what points are essential in the deposition of the witnesses; in the course of the trial he helps evaluate rightly the exceptions and adverse arguments and to refute them: in a word, he gathers and gives effect to everything that can be alleged in favour of the client's contention. In this multiple activity advocates [...] must not withdraw themselves from the one common final end: the discovery, ascertainment and legal assertion of the truth, the objective fact.¹⁰¹

As the above quotation indicates the search for the objective truth is the principle that integrates and motivates the advocate's activity and he/she must, therefore, avoid any subterfuge and act from an informed and honest conscience.

Although marriage cases do concern the public good, the parties can represent themselves without appointing one or more advocates (c. 1482, §3). If the judge determines that the case requires the intervention of an advocate he can appoint one (c. 1481). If an advocate is appointed, he/she is mandated by the source of the appointment. In fulfilling Pius XII's directives the advocate will, as judicial advisor and legal protector, insure that the facts, the process and the concessions of the law are utilized in an honest and maximum manner for the discovery of truth. "And as such, he does not intervene in the procedure before the publication of the acts of which the decree is made known to him as well as to the party he represents. After the conclusion of the case, he can intervene if there is a plea and if it is he who makes it."¹⁰² As this quotation states, with the publication of the *Acta*, the advocate and

¹⁰¹See WOESTMAN, *Papal Allocutions to the Roman Rota 1939-1994*, p. 28. The original Latin text is in *AAS*, 36 (1944), p. 286.

¹⁰²See R. PAGÉ, "L'avocat, le procureur et la curateur dans les causes matrimoniales," in *SC*, 31 (1997), p. 294: "Et comme tel, il n'intervient pas dans la procédure avant la publication des actes dont le décret lui est notifié ainsi qu'à la partie; après la conclusion de

the parties can examine the *Acta* “not yet known to them” (c. 1598, §1) and, although not obliged to, the advocate can present a plea with the client’s agreement. In addition, c. 1678, 1° rules that “the advocates of the parties ... have the right to attend cross-examination of the parties, witnesses and expert.”

A question arises regarding the appointment of an advocate *ex officio* for a party absent from the proceedings and/or uncooperative. It is clear from c. 1481 that the judge is not obliged to appoint a legal representative in marriage cases. However, if an advocate is appointed the Rota insists that proper procedures be observed and appropriate action be taken on behalf of the client.¹⁰³ In one case, the Rota declared a sentence null because the same advocate was assigned to the petitioner and to the respondent who opposed the declaration of nullity.¹⁰⁴ In another example, the Rota declared the sentence null because the same individual served as defender of the bond and advocate for the contesting respondent.¹⁰⁵ Incompatibility of roles and a neglect of the right of defense can, therefore, result from illegitimate *ex officio* appointments of advocates. For example, as a party in the cases, the advocate does have the right to be present for and participate in the collection of proofs. This right does not extend to the actual taking of evidence. Judge-auditors or judge-instructors,

la cause il peut intervenir s’il a plaidoirie et si c’est lui qui la fait.”

¹⁰³See c. BURKE, 13 December 1989, in SC, 25 (1991), p. 195. See also IDEM, 29 April 1993, p. 247.

¹⁰⁴See J. BEAL, “Making Connections: Procedural Law and Substantive Justice,” in *The Jurist*, 54 (1994), p. 150. Beal refers to a decision c. GIANNECCHINI, 26 June 1984.

¹⁰⁵BEAL, “Making Connections,” p. 150. This decision was given c. POMPEDDA, 23 July 1986.

who take evidence, participate in the tasks of the judge (c. 1428). One cannot be an impartial judge and a party in the case at one and the same time. As C. Burke states, "it is evident that this combination [auditor/advocate] is disadvantageous for justice."¹⁰⁶ In addition to an incomparability between the auditor/advocate roles, there also can be an imprecision in the perceptions of the roles of the advocate and the defender of the bond.

Provida mater ecclesia specifies that the "respondent who is opposed to the nullity of the marriage, can appoint an advocate even though there is a defender of the bond whose duty it is to act in favour of the validity of the bond, and to whom the respondent can supply arguments and evidence."¹⁰⁷ The defender of the bond, in identifying evidence in the *Acta* for validity, argues for the validity of the bond. He/she defends the objective rights of both parties to a valid bond. It would be difficult to envision a defender of the bond providing advice to a petitioner who wants the declaration of nullity and to the respondent who is not opposed to it. The following views may be contrary to law and established jurisprudence: "the respondent's advocate is the defender of the bond"¹⁰⁸ and "the right of defense of the missing respondent is provided for and protected by the defender of the bond who is bound by that

¹⁰⁶See c. BURKE, 23 May 1988, in *ME*, 115 (1990), p. 342.

¹⁰⁷See Art. 43, §4, in *AAS*, 28 (1936), p. 323: "Pars conventa, quae matrimonii nullitatem oppugnet, constituere potest advocatum, quamvis adsit vinculi defensor qui pro vinculo certare debet, cui ipsa pars argumenta et probationes suppeditare valet."

¹⁰⁸See WRENN, *Procedures*, p. 24.

office to guard the validity of marriage which is favoured by the law itself.”¹⁰⁹ The defender of the bond is part of the tribunal while the advocate is a party in the case.

5.3.1.1 - The appointment of an advocate in marriage cases involving alcoholism

Is there a special need for an advocate in marital cases involving alcoholism? The material presented in Chapters One and Two suggests that the alcoholic can be cognitively and affectively impaired. If an alcoholic party does not appoint an advocate and if the judge determines (possibly with assistance from an expert) that the party is or may be cognitively and affectively impaired, he should appoint an advocate to assist throughout the nullity process. The alcoholic's impairment may be such that adequate capacity to participate in the tribunal process, without assistance from an advocate, is lacking. Although there are individual differences and every case must be assessed individually, it is generally accurate to state that the greater the degree of affective and cognitive impairment the greater the need for advocate involvement in the tribunal process. When there is, therefore, a serious involvement with alcohol (alcohol dependence and the more serious phases, types and states of alcoholism), the advantages of an advocate's assistance will be apparent.

Would a case involving alcoholism also require the appointment of a procurator? There are similarities between the responsibilities of the advocate and procurator. The commonalities justify the appointment of the same individual to both functions by many local tribunals. There are also differences between the two roles. These differences may require, for the adequate defence of rights, the appointment of a procurator in addition to an advocate.

¹⁰⁹See G. YANUS, “Right of Defense for a Missing Respondent,” in K. VANN and L. JARRELL (eds.), *Roman Relies and CLSA Advisory Opinions*, Washington, DC, Canon Law Society of America, 1991, pp. 124-125.

5.3.2 - The procurator's function

The law specifies that the procurator must be at least eighteen years of age and of good reputation (c. 1483). A party may choose to appoint a procurator. In a contentious trial which involves minors or the public good, except for marriage cases, the judge is to appoint *ex officio* "a defensor," (equivalent of an advocate),¹¹⁰ for a party who lacks one (c. 1481).¹¹¹ Ordinarily only one procurator is appointed; however, if for a just reason others have been, the original agreement must state that the action of the first excludes the actions of the others (c. 1482). In order to function validly, the procurator must submit a mandate. If one is not submitted, the judge can specify a time for its submission. The validity of the procurator's actions is then suspended until a mandate is received (c. 1484). The mandate allows the procurator, as a proxy, to perform judicial acts for a party but he needs a special mandate for engaging in certain specific act that could seriously endanger the mandator's rights (c. 1485). When the client does not forbid the action and when his/her interests require it, the procurator also has the right to appeal a definitive decision (c. 1486, §2). The common theme that is clearly present in all of these canons, describing the procurator's responsibilities and boundaries, is the protection of the client's rights in the search for objective truth.

¹¹⁰ *CCEO*, c. 1139, §3, which is the equivalent of *CIC/83* c. 1481, §3, uses the exact term "advocatum" instead of "defensorem." The use of "advocatum" in *CCEO* seems to clarify the ambiguity implied in "defensor," which must no longer be equivocated with "procurator."

¹¹¹ J. Beal states that "while the law does not bar tribunals from appointing advocates *ex officio* for parties only a party can designate a procurator." See BEAL, "Procedural Law and Substantive Justice," p. 154.

As a lawfully mandated proxy, the procurator can perform legal acts for a party who is present, absent, uncooperative or cannot be presently located. However, an *ex officio* mandated procurator is not lawfully mandated until the client has been informed of the appointment and has accepted it at least tacitly or implicitly.¹¹² The eminently practical combination of the two functions of advocate and procurator, which, however, can be done only with the legitimate mandate of the parties themselves, could prove more practical in marriage nullity procedure. A questionable view, expressed by C. Sheehy, reads:

If one is formally appointed Advocate by a plaintiff or respondent in a case, one is also appointed the Procurator. The distinction between the two is very fine, and effectively in marriage nullity cases, non-existent. It can be said that both do judicial business for someone else. The Procurator for the Court; and the Advocate specifically on behalf of a particular party in a canonical process [...] These functions are, for our purposes, indistinguishable.¹¹³

This opinion is clearly untenable because the appointment of an advocate does not automatically imply that a procurator is appointed and because the procurator does “juridical business” for the party and not “for the Court.” From cc. 1598, §1 and 1615, it seems clear that “le législateur ne présume pas, à bon droit, cumulée par la même personne dans la cause.”¹¹⁴ When both functions are performed by the same person, a party’s right to examine

¹¹²Canon 1620, 6° states that: “A judgement is null with an irremediable nullity if someone acted in another’s name without a lawful mandate.” See also F.G. MORRISEY, “Judge Appointing Procurator in Marriage Nullity Cases,” in K. VANN and J. DONLON (eds.), *Roman Replies and CLSA Advisory Opinions*, Washington, DC, Canon Law Society of America, 1995, pp. 105-106.

¹¹³C. SHEEHY, “The Advocate,” in H.F. DOOGAN (ed.), *Catholic Tribunals: Marriage Annulment and Dissolution*, Newton, NSW, E.J. Dwyer, 1990, p. 181.

¹¹⁴See PAGÉ, “L’avocat, le procureur et le curateur,” pp. 301-302.

the acts of the case can be ignored or circumvented and thus a potentially legitimate plea may not be submitted.

5.3.2.1 - The appointment of a procurator in marriage cases involving alcoholism

Abstracting from the potential disregard for rights inherent in the combination of the two roles, namely advocate/procurator, would there be a need to appoint, a specific instance, a procurator in marriage cases involving alcoholism? The need to appoint a “curator,” and not strictly a “procurator,” might prove more helpful and necessary when there has been serious deterioration in cognitive and affective functioning. Cognitive and affective functions are presumably reliant on the CNS and the abuse of alcohol can cause substantive neurological damage (Chapter One and Two). Neurological damage is frequently demonstrable in the more serious phases, types and states of alcoholism. An individual, severely damaged by the abuse of alcohol, may not be capable of performing the juridic acts necessary for the defense of rights. When such is the case, a curator must act in his/her place.

5.3.3 - The curator's function

The 1983 Code does not indicate that the curator should possess any special qualifications. Since the judge is responsible for his/her appointment, it is presumed that the appointment will be preceeded by a determination that the necessary qualifications are present (c. 1479). The curator's functions are differentiated from the procurator's by the fact that the curator does not need a mandate from the client,¹¹⁵ is cited and can perform juridic acts for which a procurator would require a special mandate (c. 1485), needs only an

¹¹⁵See c. SABATTANI, 17 January 1987, in *ME*, 113 (1988), p. 280.

appointment from the judge, can, if competent, fulfill the functions of an advocate and a procurator, can designate an advocate and/or procurator for his client and provide the required mandate(s). Although the curator does not need a mandate and although the client be currently incapable of appropriate action on his/her own behalf, the client retains the right of defense and the right to represent himself/herself if he/she regains competency.¹¹⁶

The law itself contains evidence that this right is retained. First, individuals who are “barred from the administration of their goods” and individuals who are “of infirm mind can themselves stand before the court only to respond concerning their own offenses or by order of the judge” (c. 1478, §4). Second, it is the judge's obligation to examine the situation carefully and decide whether or not a curator should be appointed to safeguard the rights of the person involved. If the case *in fact* needs a curator and the judge, whether culpably or inculpably, neglects to appoint one, the sentence pronounced by him would be invalid.¹¹⁷ A judge can also admit to the ecclesiastical court, a curator appointed by a civil authority (c. 1479). If possible, he is to consult with the client's diocesan Bishop before admitting a civilly appointed curator (c. 1479).¹¹⁸ To ensure right of defense, c. 1478, §1 and §4, specifies that the judge must appoint a curator for those who are deprived of reason (absolute incapacity) and for those who are mentally infirm (diminished use of reason, relative incapacity).

¹¹⁶See A. STANKIEWICZ, “De curatoris processualis designatione pro mente infirmis,” in *Periodica*, 82 (1993), p. 504.

¹¹⁷See A. MENDONÇA, “The Incapacity to Contract Marriage,” pp. 317-318.

¹¹⁸The inclusion of the diocesan Bishop in c. 1479 can be interpreted as a manifestation of the legislator's determination to utilize all available resources and to take extra precaution in the defense of rights.

The difficult question for the judge is: what level of mental infirmity requires the appointment of a curator? When the judge examines the *libellus* he must determine the party's capacity to stand in court (c. 1505, §1). The incapacity to appear in court and the non-appointment of a curator can both nullify a decision (c. 1620, 5° and 7°). If the judge appoints a curator at some later time in the proceedings, the validity of the juridic acts that preceded the appointment could be questioned (unless the party became mentally ill only during the process).¹¹⁹ There are some criteria that may facilitate the judge's decision-making process. First, although the fact of an incapacity to contract due to a cause of a psychological nature and an incapacity to stand in court are distinct and must be differentiated, it is possible that the same psychic deficit grounds both incapacities.¹²⁰ Second, Mattioli states that:

[...] a lesser degree of discretion is required to stand in court than to enter into a contract because in order to stand in court only that degree of discretion is required which is necessary to "consent to holding the court procedure, and to explain personal approval or opposition to the alleged thesis, or finally to remit himself to justice", and all these evidently do not demand the degree of discretion which is necessary to elicit matrimonial consent.¹²¹

Third, although experts, in marriage cases, are ordinarily consulted to determine capacity at the time of consent, the judge has the right "to accept reports already made by other experts" (c. 1575) and use experts "to establish some fact or to ascertain the true nature of some matter" (c. 1574) when the *libellus* is examined. The application of these criteria together

¹¹⁹See PAGÉ, "L'avocat, le procureur et le curateur," p. 306.

¹²⁰See MENDONÇA, "Incapacity to Contract Marriage," p. 317.

¹²¹Ibid., p. 316. See also c. MATTIOLI, 20 December 1962, pp. 710-711 and 7 October 1965, in *SRR Dec.*, 57 (1965), pp. 625-628.

with the judge's direct knowledge will ordinarily be sufficient for a "prudent inquiry." If the judge remains in positive and probable doubt, he may appoint a curator *ad cautelam* through a decree (a judicial act);¹²² by so doing, he does not exclude the possibility of also hearing the represented party. In the event that the party does have the capacity for self-representation, the judge can revoke the decree of appointment after hearing the defender of the bond and the other party.

If the judge appoints a curator prior to accepting the *libellus*, it is treated as a "preliminary question" and he is not obliged to consult the other party.¹²³ The acceptance of the curator by the concerned party will facilitate the process but acceptance is not the basis for appointment. If the judge appoints one at some later date he does so after hearing the defender of the bond and the other party and the appointment is considered an "incidental matter."¹²⁴

The law is clear regarding the necessity of a curator, in certain cases, and the *modus operandi* of the judge. It does not, however, specify criteria for a judicial decision when the party is relatively incapable of standing in court. This *lacuna* may be partially due to the fact that the canons for curators are contained in the canons on Trials in General and are not specific to marriage cases.¹²⁵

¹²²See c. SABATTANI, 17 January 1987, in *ME*, 113 (1988), pp. 267-282.

¹²³See A. STANKIEWICZ "De curatoris processualis designatione pro mente infirmis," part I, p. 497.

¹²⁴*Ibid.*

¹²⁵Curators are mentioned in other contexts (c. 105, §2). The section on Contentious Trials contains a law regarding the termination of the curator's office and the judge's

5.3.3.1 - The appointment of a curator in cases involving alcoholism

The criterion for the appointment of a curator for an alcoholic in a marriage case would be an incapacity to stand in court. If the alcoholic has experienced serious mental and physical deterioration due to the effects of alcohol, then there is a high probability that the appointment of a curator will be necessary. As stated above, if the judge remains in doubt about the party's incapacity he can appoint *ad cautelam*. Medical records and court documents, as elements for a prudent inquiry, may well be available to the judge if serious deterioration has occurred. Deterioration due to alcoholism, particularly in the more serious phases, types and states, is frequently quite obvious. In cases of "binge drinking" (Jellinek's *epsilon alcoholism*), the unpredictability of the party may warrant an *ad cautelam* appointment. In some cases of alcohol dependence, deterioration may be less obvious. The extensive use of the defense mechanisms of denial and rationalization and distortions in thinking, characteristic of the alcoholic, may not be obvious to the judge. These changes, embedded in the party's personality, may, nevertheless, signal at least a relative incapacity. In these cases, the judge may need expert assistance to complete a prudent inquiry and to determine whether or not a curator should be appointed.

The rights and obligations of the *christifidelis* are detailed in cc. 204-231. One of these rights is "the right to be judged according to the provisions of the law" (c. 221). One of these provisions is the right of defense. To ensure justice and equity in the application of the law, the Code emphasizes the right of defense. The right of defense is protected through

subsequent responsibility (c. 1519).

the appointment of advocates, procurators and curators who provide legal advice and act as legal representatives before ecclesiastical courts. Although there are similarities between the three roles, they are distinct and it is in an understanding of their differences that the law reveals its comprehensive approach to the defense of rights. Aberrations in the appointment and functioning of these legal representatives endanger the right of defense as the tensile dynamic that protects the legal process and actualizes its potential for the discovery of truth.¹²⁶ The proven denial of the right of defense renders a judgment null with an irremediable nullity (c. 1620). Although each case must be assessed on its own merits, the more serious marital cases involving alcoholism will warrant the appointment of an advocate and curator. These appointments when warranted can be interpreted as a manifestation of the Church's general protection of and pastoral concern for its addicted members. Pastoral implications of alcoholism and nullity cases are the subject matter for the following section.

5.4 - Pastoral implications

Alcoholism, from a Christian perspective, is understood as a physical, emotional (mental) and spiritual disorder. The spiritual dimension of the condition cannot be neglected in the process of recovery.¹²⁷ The AA program, for example, describes recovery as a process of spiritual development involving prayer, meditation, self-inventory and reliance on a higher

¹²⁶See JOHN PAUL II, Allocution to the Roman Rota, 26 January 1989, in *AAS*, 81 (1989), pp. 922-927. English translation in WOESTMAN, *Papal Allocutions to the Roman Rota 1939-1994*, pp. 204-208.

¹²⁷The material presented in this section is based on the author's clinical experiences and on an interview with Father Thomas Lever. Father Lever was a pastor for 35 years. During seven of these years, he served as a missionary in Peru. He currently works with clerical personnel in the diocese of London.

power (God). The implication is that if one is at peace with oneself, others and God, there will be no need to escape into alcoholism. Pastoral care can facilitate this spiritual development integral to recovery and the prevention of relapse. The pastoral care of the alcoholic has implications for his/her entire family because recovery can result in a transition from dysfunctional to functional interpersonal relationships. The pastoral care of the family centered around alcohol may provide meaningful insights for the pastoral care that may be unique to marriage nullity cases involving alcoholism.

5.4.1 - The pastoral care of families centered around alcohol

The pastoral care of the alcoholic family can involve three interrelated approaches. Since alcoholism is commonly conceptualized as a family disorder, these approaches are to the alcoholic, to the spouse of the alcoholic and to their children.

5.4.1.1 - The pastoral care of the alcoholic

The alcoholic's general spiritual needs probably do not differ from the cross-culturally observable spiritual needs of all human beings. Some of these have been identified, by well known authors, as the need for a sense of purpose, meaning, value (Frankl), the need for an object of devotion or a need to invest oneself in an external object (Fromm), the need to trust, relate to life, to belong and to feel part of the universal plan (Maslow; Erikson), the need to experience the numinous and the transcendent (Maslow) and the need to share a common philosophy of life (Frankl). It could be hypothesized that in some cases the frustration encountered by vulnerable individuals in their attempts to fulfill these needs interact with the availability of alcohol to precipitate alcoholism. The escape into alcoholism

intensifies the value vacuum, feelings of loneliness and alienation. The pastoral worker¹²⁸ (priest, minister, pastoral minister) can help alcoholics realize that alcoholism obstructs the search for spiritual fulfillment. The facilitation of this realization is a distinctive contribution to the spiritual dimension of the alcoholic's recovery.

The framework for this contribution is an understanding of the possible characteristics of the alcoholic. It may not be an overstatement to claim that at least at the beginning of the spiritual journey most individuals are self-centered. This results in a tendency to perceive objective reality subjectively or to make oneself the center of the universe or "to deify" the self. This "idolatry" can result in aloneness, anxiety and alienation from God. Alcohol consumption can provide a temporary escape from this self-centered alienation. The self-centeredness of the alcoholic can be understood as an individualized manifestation of human egocentrism, unresolved inner conflicts and insecurity. The concepts presented in Chapters One and Two suggest that in an individual case, heredity, environment, cultural and family background, childhood conditioning and one's own personal limitations can all interact to form the alcoholic self. The self, however, still remains the agent to a greater or lesser degree. The goal of the pastoral worker is the spiritual development of the alcoholic's self or the development of the capacity to be responsible for one's own spiritual development (achieved through a reconnection with one's self, with others and with God). The alcoholic must receive external support (from others and God) so that he/she has the powers to control creatively and/or rearrange the factors that cause and sustain alcoholism. The complexity of

¹²⁸In this context "pastoral worker" includes anyone on the pastoral team.

the factors involved suggest that the pastoral worker's attitude should be nonjudgmental, noncondescending and based in "there, but for the grace of God go I." Like others, the alcoholic has perhaps abused whatever degree of freedom he possessed. His/her pervasive guilt may be evidence for an awareness of that abuse.

The question is: how does the pastoral worker contribute to the development of the desired sense of responsibility for spiritual development? A direct attack and an emphasis on the alcoholic's guilt will be counterproductive. This approach will only intensify the guilt – compulsion cycle. The pastoral goal is to decrease guilt and increase self-acceptance in order to create energy for the achievement of self-determination. At the opportune moment (when the alcoholic admits that a problem exists), the pastoral worker introduces the fact that alcoholism may have been initially initiated by factors partially beyond the individual's control and he/she instills hope by stating that the recovery of others is proof that recovery is always possible. The alcoholic can then be introduced to a network of meaningful interpersonal relationships through which the hope of recovery is solidified. Many believe that God's healing power is concretized in this community context and through the alcoholic's concerted efforts to achieve self-determination.

The pastoral worker's goal is to facilitate relatedness to the vertical dimension of recovery (spiritual values and the ultimate value, God), and the horizontal dimension of recovery (relationships with spouse, children, friends). Since these two dimensions share the relationship reality, problems and progress in the two dimensions appear to be interrelated. The active alcoholic is increasingly alienated from these nurturing relationships. One aspect of recovery, then, is an adjustment to the reality of relationships and a relinquishing of the

expectation and the self-centered demand that reality should adjust to the alcoholic. Others frequently perceive the alcoholic as emotionally immature.

It is not a surprise that the path of recovery involves a “surrender” to and acceptance of reality, a change in thinking (cognition) and feeling (affect), and a move in the direction of openness and honesty. What is “given up” is the unsuccessful attempt “to play God” and the hostile condemnation of the self and others. The resultant vacuum can then be gradually filled with feelings of love, friendliness, peacefulness and reliance upon God. The two components of surrender therefore are: 1. A conscious relinquishing of a false self-sufficiency, of fear, of anger and of resistance to the need for external help; 2. A movement toward trust in others and in God. This spiritual growth can more readily occur in a group committed to spiritual values. When guided by the framework, outlined above, the pastoral minister may be in a position to communicate with the alcoholic about his/her understanding of life’s meaning and purpose. When the pastoral minister has established rapport with the alcoholic he can then use available religious resources.

In addition to making church buildings available for AA meetings, pastoral ministers have other resources available for the promotion of spiritual recovery. Worship, the reception of the sacraments (especially reconciliation), faith sharing groups, involvement in the life of the parish and volunteer work are a few of many resources that revitalize the alcoholic’s inner resources and facilitate his spiritual development. This revitalization can have a positive impact on the alcoholic’s spouse.

5.4.1.2 - The pastoral care of the alcoholic's spouse

Clinicians have known for decades that alcoholism is a family disorder and that other family members can be as disturbed, anxious and in need of healing as the alcoholic.¹²⁹

The first reaction of the spouse of an alcoholic may be denial of the impact of alcoholism on family life. In an atmosphere of denial, the spouse does not recognize the need for assistance and rejects overtures as intrusions into privacy. When reality breaks through denial, the spouse may feel angry, guilty, shameful, alienated, overwhelmed and stigmatized. The spouse may then attempt to make the alcoholic the "scapegoat" for all family tension. The alcoholic retaliates with anger and rejection and their interpersonal relationship deteriorates. There are no socially prescribed patterns of behaviour available to the spouse that might ease the bereavement associated with the death of an intimate interpersonal relationship. The spouse's next step may be to do everything possible to "cure" the alcoholic. She becomes obsessed with her task, may excuse her spouse's drinking, feel guilty and responsible.¹³⁰ If she brought personality problems to the relationship, these will be magnified by the alcoholism of her spouse and by her own anxiety. She becomes codependent when she unwittingly reinforces the alcoholic's behavioural pattern. She needs help with her immediate problems and help to cope with the reality of her present circumstance.

¹²⁹See E. G. GOTTHEIL and E.F. GOTTHEIL (eds.), "Family Issues," in M. GALANTER (ed.), *Recent Developments in Alcoholism*, vol. 13, New York, Plenum Press, 1997, pp. 307-356.

¹³⁰The pronoun "she" is used in this context for convenience. Alcoholism is also more common among males.

The pastoral worker's first task is to help her and her children. This help is initiated by establishing rapport through sensitive nonjudgmental attention to her story. She can obtain, in this process, relief from her burdens of fears and negative feelings. This relief may enable her to cope immediately and more constructively with her circumstances and it may decrease the negative impact of her anger on her spouse and children.

The pastoral worker's goals for the non-alcoholic spouse are not unlike his/her goals for the alcoholic. The non-successful spouse syndrome is precipitated by failure to "cure" the alcoholic and its cornerstone is low self-esteem. The first goal is, therefore, disentanglement of failure from self-esteem and with this a thorough internalization of the fact that she did not cause her spouse's compulsive-addictive condition. If this can be achieved, the individual may be able to release her spouse from her futile attempts to control his alcoholism, deprive him of his reasons (her interference) for avoiding responsibility, regain her self-esteem and avoid both pampering and punishing. The pastoral care worker may be the catalyst for the attainment of this goal over a relatively short period of time. The spouse is then in a position to benefit in a maximum manner from a support group such as Al-Anon¹³¹ and to encourage her children to obtain the assistance they may require.

5.4.1.3 - The pastoral care of the alcoholic's children

Because the alcoholic is obsessed with alcohol and because he wishes to escape the responsibilities inherent to relationships, he can become physically/emotionally absent from the home and his children. The child's relationship with the alcoholic parent then becomes

¹³¹The Al-Anon program teaches relatives and friends of alcoholics to apply the Twelve Steps of the AA program to their own lives for their own spiritual development.

unpredictable and inconsistent. When the alcoholic feels guilty he may be overindulgent and when he is depressed he may be rejecting.

The nonalcoholic parent because of her own anxiety may not be capable of fulfilling the child's need for nurturance. In addition, the nonalcoholic parent may attempt to assume the roles of both parents, creating additional confusion and insecurity for the child. The child may withdraw from social contact or limit social contacts in order to protect the self and the family from the social stigma of alcoholism. In essence, the child in a family centered around alcohol may not be parented or inadequately parented.

The pastoral worker cannot assume the responsibility of parenting a child. However he/she can alert the nonalcoholic parent to the child's need for assistance, and encourage attendance at Al-Anon Family Groups, Alateen and parish and community groups. In these settings children learn about alcoholism and techniques for protecting themselves from the negative impact of alcoholism.

The approaches (outlined above) to the pastoral care of the family centered around alcohol suggest that the pastoral care worker may be in an advantageous position to initiate and sustain the spiritual dimension of recovery for the alcoholic and his family. Some believe that they are ill equipped to treat the psychological dimensions of alcoholism. The reality is that the alcoholic and his family members can, in most cases, manage these difficulties during the process of recovery. The pastoral care worker's tasks are to obtain some basic knowledge about alcoholism, to identify it in families and to initiate and make available resources for spiritual development (c. 213). Although pastoral care is usually parish

centered, tribunal personnel may also be in a position to provide pre and post annulment pastoral assistance.

5.4.2 - The pastoral responsibilities of the tribunal in marriage cases involving alcoholism

Canon 1752 implies that the purpose of ecclesiastical law is the salvation of souls. Those who apply the law in marriage cases would appear to be in a unique position to utilize the law's potential for the exercise of the healing ministry and for the spiritual development of clients. This unique position is emphasized in the following quotation. The "Tribunal ... comes in direct contact with people whose lives have often been deeply scarred by the experience of a broken marriage. Tribunal personnel need to be aware of the fact that they are often dealing with people who are still hurting deeply, people who at times feel very alienated from the Church, people who are laden with a great deal of guilt."¹³² The petitioner's approach to the tribunal may be a means of "reaching out" for a healthy interpersonal relationship and this individual may need to hear a reexpression of "the church's faith in the sacrament of marriage."¹³³ The death of a previous marriage may be an invitation

¹³²See P. POWER, "Pastoral Role of the Tribunal," in DOOGAN, *Catholic Tribunals*, p. 1.

¹³³See PONTIFICAL COUNCIL FOR THE FAMILY, RECOMMENDATIONS, "Care of the Divorced and Remarried," in *Origins*, 26 (1996-1997), p. 626.

“to participate in the resurrection of Christ.”¹³⁴ The Tribunal may be privileged to participate indirectly in the presentation of such an invitation.

There are at least five critical periods when the tribunal has the opportunity to participate in pastoral ministry. First, the initial interview with the petitioner presents an opportunity to explain the reasons for the acceptance and rejection of petitions, the consequences of affirmative and negative decisions and the possibility of the imposition of a prohibition. The second contact usually occurs when the parties review the *Acta*. This may be a time of clarification and insight for the parties. It may also be an opportunity for parties to discuss an alternative lifestyle that will result in greater fulfillment and commitment. Individuals who are lacking in self-knowledge may derive great benefit from the perceptions of others. The third contact is precipitated by the invitation to review the judge's decision. During this interview the judge may have an opportunity to have a positive impact on the lives of the parties. If a marriage has failed because of alcohol abuse and if a *vetitum* has been imposed, an informed judge can explain with firmness and sensitivity¹³⁵ what changes can and must occur for the relative stability of a future marriage. The community resources available to the party can also be introduced during this interview. It is at this point that the tribunal

¹³⁴See J. TROKAN, “Ministry to Marriage: Pastoral Profits and Theological Assumptions,” in M. LAWLER and W. ROBERTS (eds.), *Christian Marriage and Family: Contemporary Theological and Pastoral Perspectives*, Collegeville, MN, The Liturgical Press, 1996, p. 156.

¹³⁵See JOHN PAUL II, *FC*, nn. 83-84, in FLANNERY, *More Postconciliar Documents*, pp. 887-889. In these sections of his document, the Pope calls for an informed sensitive, empathetic, firm and theologically based approach with those who have experienced the failure of a marriage. It is clear, in this document, that any compromise in the Church's teaching will not benefit the parties.

could offer a limited number of group and/or individual subsequent sessions to the parties. The purpose of these sessions would be to ensure that the true purpose of a declaration of nullity be understood and internalized. Healthy interpersonal relationships, spiritual understanding, development, healing and benefit from the sacrament of marriage can result from a declaration of nullity. The tribunal, if mandated by the diocesan Bishop, could be an agent of growth and change for the individuals who utilize its services.

Finally, it seems reasonable to recommend that tribunal personnel be involved in the design and delivery of marriage preparation courses.¹³⁶ Tribunal personnel are involved in the concreteness of marriage success and failure and are aware of the rich content of the church's laws and magisterial teachings on the reality of marriage.

The final section of this chapter has focused on the pastoral care of alcoholics and their families and on the pastoral responsibilities of tribunals. Pastoral care workers may be in a unique and advantageous position to initiate changes and to introduce the spiritual dimension of recovery to those who suffer from alcoholism and its consequences. Tribunal personnel, when properly mandated, also have opportunities to ensure that individuals derive benefit from declarations of nullity and from the Church's laws and magisterial teachings on marriage.

Summary and Conclusions

In this chapter four topics associated with alcoholism and marital consent were discussed. The first of these topics was the possible use of canons other than c. 1095 for the

¹³⁶There are several models available for the preparation of individuals about to enter second marriages. See S. PREISTER and J. YOUNG, *Catholic Remarriage: Pastoral Issues and Preparation Models*, New York/Mahwah, Paulist Press, 1986, xii, 196 p.

adjudication of alcoholism. Of the other canons on marital consent, cc. 1097, 1098 and 1102 appear, from the perspective of their content, to be the more probable sources of adjudication. The facts of a particular case may indicate that any one of these canons is more appropriate for the accurate joining of issues. Because dishonesty, denial and rationalization are frequently associated with alcoholism, and because alcoholism can have serious consequences for the *bona* of marriage, cc. 1097, 1098 and 1102 may have particular relevance for cases involving alcoholism.

Regardless of the ground of adjudication, a prohibition against a future marriage can be imposed. The second section in this chapter discussed the reasons, criteria for and value of prohibitions. A prohibition is imposed to communicate the Church's teaching on the dignity of marriage, to protect an innocent party and to ensure that the party on whom it is imposed will make the necessary changes before a new marriage is attempted. The judge will impose a *vetitum* when moral certitude exists that a future attempted consent will not be valid. Although criteria for imposition vary and different practices exist for both imposition and removal of *vetita*, the general consensus in the canonical literature is that *vetita* are necessary, effective and therapeutic. The value of prohibitions could be enhanced if each particular church developed criteria and procedures for imposition and removal, had clear guidelines for distinguishing between *vetita* and *monita* and supervised the process through which the goals of a *vetitum* are achieved. When alcohol abuse and dependency exist, the probability is high that the capacity to provide for the *bona* of marriage may be seriously compromised and judges, after a study of the merits of the individual case, may determine that the imposition of a *vetitum* is necessary.

The third topic in this chapter addressed the functions and reasons for advocates, procurators and curators. As legal advisors and legal representatives for the parties, these individuals promote the defense of the parties' rights and ensure that parties receive justice and equity through the application of law. It would seem that individuals who are seriously involved with alcohol could benefit from the assistance of an advocate and procurator. In some cases of significant deterioration from alcohol abuse, the appointment of a curator may be necessary for the client's defense of rights and for the validity of the judgement.

The final section of this chapter presented an overview of the pastoral care of families centered around alcohol and a summary of the tribunal's responsibilities for pastoral care. Because recovery from alcoholism invariably involves spiritual development, pastoral care workers are in an advantageous position to provide for the initiation and maintenance of this spiritual dimension of recovery. Likewise tribunal personnel can utilize their procedural contacts with alcoholic clients to discuss the negative consequences of alcoholism for marriage, personal adjustment and family life. Tribunal personnel can also use, because of their special knowledge and skills, follow up sessions to declarations of nullity and participation in marriage preparation courses as occasions for pastoral involvement.

GENERAL CONCLUSION

The clinical aspects of alcoholism presented in Chapter One indicate that the behavioral sciences have developed and labeled categories to summarize, integrate and communicate objective information discovered on alcoholism. Categories such as acute intoxication, abuse, dependence (psychical and/or psychological), withdrawal, and tolerance are descriptive of behavioral patterns. An individual's behavioral pattern can be observed and a comparison made between these observations and the contents of the categories. From this comparison inferences can be drawn regarding the impact of alcoholism on the individual's capacity to engage in the activities necessary for the performance of a human act. It is the impact of alcoholism (and not so much the condition itself) that is of interest to the judge. The judge is interested in whether or not an incompatibility exists between the consequence of alcoholism and the performance of the human act of consent.

Acute intoxication and a state of withdrawal are usually transitory conditions. However, the existence of these conditions themselves may exclude the performance of informed and fully conscious human acts.

Alcohol abuse may or may not progress to psychological and/or physical dependence and tolerance. However, alcohol abuse and psychological dependence (when present) often indicate a reliance on alcohol consumption as a coping mechanism and a failure and/or unwillingness to be actively involved in the development of adequate adjustment strategies. When alcohol abuse and psychological dependence interfere *seriously* with an individual's capacity to understand and provide for the *bona* of marriage an affirmative decision may be justified.

Physical dependence, tolerance, withdrawal symptoms and compulsive drinking may

indicate that changes and/or damage have occurred in the bodily structures involved in the performance of human acts. An incompatibility may therefore exist between the capacity and the requirements of the act of consent. Likewise, a greater probability of damage to the CNS and, therefore, of incompatibility between capacity and requirements exists with the more serious phases, types and states of alcoholism. Although each case must be assessed on its own merits, the above summary suggests that the behavioral sciences can be valuable resources for the judge when confronted with the task of arriving at moral certitude.

In arriving at moral certitude, in an individual case, the judge must determine if involvement with alcohol excludes the functioning necessary for the exchange of valid consent. Research has demonstrated that alcoholism can have a negative impact on cognitive, affective and motivational functioning or on the functions presumed to be involved in the exchange of consent. Although these functions are conceptually distinct, they are interrelated and integrated in the acting person. It is reasonable to assume, and experience confirms, that the more intact and integrated these functions are, the higher the probability that the subject will possess a maturity level proportionate to the exercise of discretionary judgement and the assumption of marital obligations. Because alcoholism has demonstrable negative consequences for the maturational process, its presence has allowed and can allow judges to question whether or not the psychological maturity necessary for the exercise of proportionate discretionary judgement actually exists at the time of consent. The ability to provide for the *bona* of marriage demands a non-specified but proportionate level of intrapersonal and interpersonal integration. If alcoholism excludes interpersonal integration, that is, the capacity to establish a minimum intimate interpersonal relationship, a significant

element for both the *bonum coniugum* and the *bonum prolis* will not be present. Although the data contained in the *Acta* will determine the decision in each case, the presence of a *serious* dependence on alcohol and the more serious phases, types and states of alcoholism may, in most cases, coexist with the proof of the incapacities of c. 1095, 2° and/or 3°.

To render an affirmative decision on the basis of c. 1095, 3°, the court must find the alcoholic incapable of fulfilling (and, therefore, of assuming) the essential obligations derived from marriage and its *bona*. There must be a *serious* disproportionality between capacity and obligations. The serious lack of intrapersonal integration, caused by alcoholism, will in many cases, prevent the realization of some or all of marriage's *bona*.

The impact of alcoholism, as a psychic cause, can be assessed through assistance from experts and through the application of the principles of antecedence, severity, perpetuity and relativity. Antecedence indicates that alcoholism must exist at the time of consent for a consideration of invalidity. The principle of severity implies that the impairment of personality (due to alcoholism) is such that it renders the fulfillment of the essential marital obligations physically and/or morally impossible. The application of the principle of perpetuity, that is, incurability of the cause with ordinary and licit means, controverted in canonical doctrine and jurisprudence and, therefore, it could endanger justice and equity. Many researchers and clinicians believe that alcoholism is incurable even after individuals have remained abstinent and proceeded to admirable levels of intrapersonal integration. If alcoholism exists at the time of consent and if its severity is such that the assumption of the essential obligations is morally impossible, a declaration of nullity is justified regardless of future developments. The acceptance of relativity, as a justification for a declaration of

nullity, would mean that essential obligations could not be assumed because of a serious dysfunctionality in the interrelationship between the parties. Although alcoholism clearly causes havoc with interpersonal integration, it is difficult to envision the application of relativity in a particular case. The focus of adjudication is always on the alcoholic's capacity/incapacity to assume marital obligations at the time of consent.

It is in the application of juridic principles, the integration of the data provided by behavioral sciences with the law and the use of expert opinion that Rotal auditors make their greatest contribution to jurisprudence. From the analyses of Rotal decisions presented in Chapters Three and Four, it is clear that many Rotal sentences and Rotal jurisprudence (as an evolutionary science) are a rich resource for the application of the law in the tribunals of particular churches.

The question of the adjudication of cases involving alcoholism on grounds other than c. 1095 arises because of the requirement that the joining of issues and the sentence itself should reflect, accurately and comprehensively the reality of the case. Because dishonesty, denial and rationality are behaviours frequently associated with alcoholism and are reflective of the individual's level of intrapersonal integration, cc. 1097, 1098 and 1102 may have particular relevance either as primary or subordinated grounds. The comprehensive management of a case may include not only a consideration of grounds other than c. 1095 but also the imposition of a prohibition. A prohibition may be utilized to communicate to the alcoholic the realities of his/her condition, to ensure that the sacredness and requirements of marriage are understood, to protect the alcoholic from the trauma of another marriage failure, and to protect the rights of an innocent third party.

The protection of rights is central to the Church's administration of justice. For this reason and for reasons of justice and equity, the law provides for the appointment of advocates, procurators and curators. Individuals who were seriously involved with alcohol, at the time of marital consent, could benefit from the assistance of an advocate and procurator. When there has been significant deterioration due to alcohol abuse, the appointment of a curator may be necessary for the defense of the party's rights, with justice and equity, and for the validity of the adjudication process.

Equity (justice tempered with charity) is a characteristic of the application of Church law. Charity (if not justice) demands that tribunal personnel work in cooperation with other ministers to provide pastoral care in cases involving alcoholism.¹ Tribunal personnel can utilize their procedural contacts with alcoholic clients to discuss the negative consequences of alcoholism for personal development, marriage and family life. Tribunal personnel could also implement pastoral care through follow-up sessions to declarations of nullity and through participation in marriage preparation.

The ultimate purpose for law in the Church is the salvation of souls (c. 1752). The laws on marriage and marriage consent are, in themselves, just, equitable, realistic and profoundly meaningful. Their just and equitable application can provide emotional, interpersonal and spiritual healing to those who seek the ministry of the tribunal.

¹See JOHN PAUL II, *Ad limina* Address, 17 October 1998, "How the Church Approaches Annulment Cases," in *Origins*, 28 (1998-1999), p. 362: "Among these particularities is the pastoral character of law and of the exercise of justice in the Church. In fact, the pastoral character of canon law is the key to the correct understanding of canonical equity, that attitude of mind and spirit which tempers the rigor of the law in order to foster a higher good. In the Church, equity is an expression of charity, in truth, aiming at a higher justice which coincides with the supernatural good of the individual and the community."

An Evaluation of A Drinking Pattern¹

Alcoholism strikes one out of every ten people who drink. Not everyone has the physiological makeup to become alcoholic, but anyone who drinks could be at risk. Alcoholism doesn't discriminate. It afflicts people of all ethnic backgrounds, professions, and economic levels. It is not known precisely what causes this disease, but drinking is clearly a prerequisite. Therefore everyone who drinks should periodically evaluate their drinking patterns and behavior. Here is a self-test to help you review the role alcohol plays in your life. These questions incorporate many of the common symptoms of alcoholism. This test is intended to help you determine if you or someone you know needs to find out more about alcoholism; it is not intended to be used to establish the diagnosis of alcoholism.

	YES	NO
1. Do you ever drink heavily when you are disappointed, under pressure or have had a quarrel with someone?	_____	_____
2. Can you handle more alcohol now than when you first started to drink?	_____	_____
3. Have you ever been unable to remember part of the previous evening, even though your friends say you didn't pass out?	_____	_____
4. When drinking with other people, do you try to have a few extra drinks when others won't know about it?	_____	_____
5. Do you sometimes feel uncomfortable if alcohol is not available?	_____	_____
6. Are you in more of a hurry to get your first drink of the day than you used to be?	_____	_____
7. Do you sometimes feel a little guilty about your drinking?	_____	_____
8. Has a family member or close friend ever expressed concern or complained about your drinking?	_____	_____
9. Have you been having more memory "blackouts" recently?	_____	_____
10. Do you often want to continue drinking after your friends say they have had enough?	_____	_____

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An Evaluation of A Drinking Pattern

11. Do you usually have a reason for the occasions when you drink heavily? _____
12. When you are sober, do you often regret things you have done or said while you are drinking? _____
13. Have you ever switched brands or drinks following different plans to control your drinking? _____
14. Have you sometimes failed to keep the promises you have made to yourself about controlling or cutting down on your drinking? _____
15. Have you ever had a DWI (driving while intoxicated) or DUI (driving under the influence of alcohol) violation, or any other legal problem related to your drinking? _____
16. Do you try to avoid family or close friends while you are drinking? _____
17. Are you having more financial, work, school and/or family problems as a result of your drinking? _____
18. Has your physician ever advised you to cut down on your drinking? _____
19. Do you eat very little or irregularly during the periods when you are drinking? _____
20. Do you sometimes have the "shakes" in the morning and find that it helps to have a "little" drink, tranquilizer or medication of some kind? _____
21. Have you recently noticed that you cannot drink as much as you once did? _____
22. Do you sometimes stay drunk for several days at a time? _____
23. After periods of drinking do you sometimes see or hear things that aren't there? _____
24. Have you ever gone to anyone for help about your drinking? _____
25. Do you ever feel depressed or anxious before, during or after periods of heavy drinking? _____
26. Have any of your blood relatives ever had a problem with alcohol? _____

Any "Yes" answer indicates a probable symptom of alcoholism. "Yes" answers to several of the questions indicate the following stages of alcoholism:

Questions 1 to 8: Early stage.

Questions 9-21: Middle stage.

Questions 22 to 26: Beginning of final stage.

Symptoms of Alcoholism¹

- | | YES | NO |
|---|-------|-------|
| 1. PREOCCUPATION | | |
| A. Do you ever look forward to the end of a day's work so that you can have a couple of drinks and relax? | _____ | _____ |
| B. Do you sometimes look forward to the end of the week so that you can have some fun drinking? | _____ | _____ |
| C. Does the thought of drinking sometimes enter your mind when you should be thinking of something else? | _____ | _____ |
| D. Do you sometimes feel the need to have a drink at a particular time of the day? | _____ | _____ |
| 2. GULPING DRINKS | | |
| A. Do you usually order a double or like to have your first two or three drinks quickly? | _____ | _____ |
| B. Do you sometimes have a couple of drinks before going to a party or out to dinner? | _____ | _____ |
| 3. INCREASED TOLERANCE | | |
| A. Do you find that you can often drink more than others and not show it too much? | _____ | _____ |
| B. Has anyone ever commented on your ability to hold your liquor? | _____ | _____ |
| C. Have you ever wondered about your increased capacity to drink and perhaps felt somewhat proud of it? | _____ | _____ |
| 4. USE OF ALCOHOL AS A MEDICINE | | |
| A. Do you ever drink to calm your nerves or reduce tension? | _____ | _____ |
| B. Do you find it difficult to enjoy a party or dance if there is nothing to drink? | _____ | _____ |
| C. Do you ever use alcohol as a nightcap to help you get to sleep at night? | _____ | _____ |
| D. Do you ever use alcohol to relieve physical discomfort? | _____ | _____ |
| 5. DRINKING ALONE | | |
| A. Do you ever stop in a bar and have a couple of drinks by yourself? | _____ | _____ |
| B. Do you sometimes drink at home alone or when no one else is drinking? | _____ | _____ |

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Symptoms of Alcoholism

6. BLACKOUT

- A. In the morning after an evening of drinking, have you ever had the experience of not being able to remember everything that happened on the night before? _____
- B. Have you ever had difficulty recalling how you got home after a night's drinking? _____

7. SECLUDED BOTTLE

- A. Do you sometimes hide a bottle in the house in the event you may need a drink sometime? _____
- B. Do you ever keep a bottle in the trunk of your car just in case you may need a drink? _____

8. NONPREMEDITATED DRINKING

- A. Do you ever stop in to have two or three drinks and have several more than you planned? _____
- B. Do you ever find yourself stopping in for a drink when you planned to go straight home or someplace else? _____
- C. Are you sometimes one of the last ones to leave a bar or a drinking party when you had planned to go home earlier in the evening? _____
- D. Do you sometimes drink more than you think you should? _____
- E. Is your drinking sometimes different from what you would like it to be? _____

9. MORNING TREMORS

- A. Have you ever had the shakes or tremors of the hands after a night of drinking? _____

10. MORNING DRINK

- A. Have you ever taken a drink in the morning to help you over a hangover? _____
- How many of these questions did you answer Yes? _____

No one can settle for you the question of whether or not you are an alcoholic. If you answered even one question Yes, you will want to watch yourself. If you answered three or more Yes, or if you can notice a drift in the affirmative, you have a definite reason to worry.

The Twelve Steps of Alcoholics Anonymous¹

1. We admitted we were powerless over alcohol— that our lives had become unmanageable.
2. Came to believe that a Power greater than ourselves could restore us to sanity.
3. Made a decision to turn our will and our lives over to the care of God as we *understood Him*.
4. Made a searching and fearless moral inventory of ourselves.
5. Admitted to God, to ourselves, and to another human being the exact nature of our wrongs.
6. Were entirely ready to have God remove all these defects of character.
7. Humbly asked Him to remove our shortcomings.
8. Made a list of all persons we had harmed, and became willing to make amends to them all.
9. Made direct amends to such people wherever possible, except when to do so would injure them or others
10. Continued to take personal inventory and when we were wrong promptly admitted it.
11. Sought through prayer and meditation to improve our conscious contact with God as we *understood Him*, praying only for knowledge of His will for us and the power to carry that out.
12. Having had a spiritual awakening as the result of these Steps, we tried to carry this message to alcoholics, and to practice these principles in all our affairs.

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The Twelve Traditions of Alcoholics Anonymous¹

1. Our common welfare should come first: personal recovery depends upon AA unity.
2. For our group purpose there is but one ultimate authority – a loving God as He may express Himself in our group conscience. Our leaders are but trusted servants; they do not govern.
3. The only requirement for AA membership is a desire to stop drinking.
4. Each group should be autonomous except in matters affecting other groups or AA as a whole.
5. Each group has but one primary purpose, to carry its message to the alcoholic who still suffers.
6. An AA group ought never endorse, finance, or lend the AA name to any related facility or outside enterprise, lest problems of money, property, and prestige divert us from our primary purpose.
7. Every AA group ought to be fully self-supporting, declining outside contributions.
8. Alcoholics Anonymous should remain forever nonprofessional, but our service centers may employ special workers.
9. AA, as such, ought never be organized; but we may create service boards or committees directly responsible to those they serve.
10. Alcoholics Anonymous has no opinion on outside issues; hence the AA name ought never be drawn into public controversy.
11. Our public relations policy is based on attraction rather than promotion; we need always maintain personal anonymity at the level of press, radio and films.
12. Anonymity is the spiritual foundation of all our Traditions, ever reminding us to place principles before personalities.

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Glossary of Terms for Chapters One and Two

Acetylcholine	A chemical that acts as a transmitter agent in many synaptic gaps (spaces between neurons) and at neuromuscular junctions.
Aversive Stimulation	A type of noxious stimulation that provokes learning a response to avoid the stimulation.
Cholinergic System	A system of neurons that, when activated, releases acetylcholine as a transmitter agent.
Conditioning	A process by which responses are learned.
Denial	A defense mechanism that permits awareness of unacceptable impulses and associated ideas but frees them of their threatening implications.
Excitatory Synapse	A chemical condition between neurons (synaptic gap) whereby the transmission of information from one neuron to another is facilitated.
Factor Analysis	A statistical method used to identify basic dimensions or traits that account for the relationship between different tests and other behavioral indices.
Glutamate	An amino acid that functions as an excitatory transmitter.
Inhibitory Synapse	A chemical condition between neurons (synaptic gap) whereby the transmission of information from one neuron to another is inhibited.
Microsomal Ethanol Oxidizing System	A subsystem of (enzymes) that “breakdown” or changes the chemical composition of alcohol.
Negative Reinforcement	Any event, stimulus or behavior that, when removed weakens a contingent response.
Neuron	A nerve cell which is the basic functional and structural unit of the nervous system. A neuron is composed of a soma (body), an axon and one or more dendrites.

Glossary of Terms for Chapters One and Two

Neurotransmitter	A chemical substance that functions as a vehicle of communication between the terminal buttons of one neuron and the receiving membranes of the adjacent neuron (synaptic gap).
N-methyl-D-aspartate	A subtype of receptor neuron that is activated by glutamate.
Positive Reinforcement	Any event, stimulus or behavior that strengthens a contingent response.
Primary Pleasure	A fundamental emotional experience that is characterized by a desire to have the stimulation that produced it repeated. An emotional experience that accompanies the fulfillment of basic needs.
Rationalization	A defense mechanism that uses reason to provide acceptable explanations of otherwise unacceptable and painful ideas and actions.
Synaptic Transmission	A general term that describes the process of transfer of information from one neuron to another.

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BIOGRAPHICAL NOTE

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From 1972 to 1995, he was a Consultant Psychologist in elementary and secondary schools, for the Gifted Program, the Hearing Impaired Program and the Adult Education Program at the Board of Education for the City of London (now the Thames Valley District School Board). From 1972 to 1992, he was an Associate Professor at the Faculty of Part-time and Continuing Education, the University of Western Ontario, teaching courses in Introductory Psychology, Educational Psychology, Learning Disabilities, Child Development, Exceptional Children, Developmental Psychology and Human Sexuality.

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