
Understanding Due Discretion of Judgment in Catholic Marriage Courts

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Psychiatrists and psychologists provide consultation to the Catholic Church's marriage courts. Operating under the Church's legal code, these tribunals assess the validity of weddings that have ended in divorce. This report describes one of the standards used for this purpose, the lack of due discretion of judgment, which is concerned with the maturity, understanding, and appreciation that the couple brought to the ceremony. This normal capacity is vulnerable to various mental illnesses, which if present with sufficient severity may nullify the marriage vows as seen by the Church (though not necessarily by the state). Such a finding results in freedom to marry again despite the Church's ban on divorce, provided that due discretion of judgment is regained. Case examples and discussion of the assessment process for due discretion of judgment prepare the consultant to apply psychiatric findings to this unique and urgent legal issue.

Divorce, by its very frequency, has caught the public eye and become an object of concern for mental health professionals. The Catholic Church in the United States continues to receive a share of this attention, as bishops express growing pastoral concern for the plight of divorced members, and yet remain faithful to the teaching that marriage is indissoluble. This concern has resulted in the increasingly sophisticated appli-

cation of a mental health perspective to broken marriages, with a rapid rise in the granting of annulments. This phenomenon has suggested to some that there may be corruption or at least hypocrisy in the Church's marriage courts.

The numbers of marriages annulled lend some credence to such a negative view. Until the late 1930s, 100 annulments was a typical annual world total;¹ during the decade of the 1980s, this figure rose to more than 60,000. The vast majority of these each year came from the U.S.² Yet, only a minority of the potential candidates seek annulments. There were approximately eight million divorced Catholics in the United States in 1983, and their number is estimated to increase at the rate of approximately 250,000 annually.³

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However, the current number of annulments remains much smaller than the number of applicants. In 1939, the Cardinal Archbishop of Chicago responded to a Vatican criticism about the number of annulments in his diocese by pointing out that the large and superbly trained staff of his marriage tribunal had meticulously processed a large number of applications, closely following jurisprudence from the Church's highest court.¹ It has continued to do this,⁴ and over the years many of the other American jurisdictions, or dioceses as they are called, have upgraded and expanded their tribunals.

The United States is presently divided into 181 dioceses, based on population and geography. Each is headed by a bishop who is ultimately responsible for deciding on applications for annulment of marriages. The bishop normally delegates this responsibility to priests with doctoral level training in Canon Law,^{5,6} who in turn structure the tribunal's proceedings and call upon both clergy and laity for such tasks as triaging and preparing cases for decision, and presenting the evidence and arguments for and against nullity as each case is heard. In the process, they often utilize expert consultation, usually from a psychiatrist or psychologist.

The mechanics of psychiatric consulting work in this church court context vary somewhat according to each local tribunal's customs. Two general tendencies can be readily identified from the literature and from our observations. Most consultation is carried out at the tribunal's request, with the mental

health professional primarily using the reports and presentations of the tribunal's officials. The psychiatrist may write a report, provide testimony at the hearing, or do both. Secondly, experts may come into a case at a party's request and with the judge's approval. In these cases, experts usually interview the party, perform a psychiatric assessment using the sources of collateral data, submit a report, and often testify. In both instances, experts offer diagnoses and identify factors that relate to the man and/or woman's ability to make a decision to marry.

The Church's Code of Canon Law strongly encourages such use of experts. Usually they are asked to address one or more of the three principal psychological obstacles to valid marriage cited in Canon 1095 of this Code.⁵ These are lack of due use of reason, lack of due competence, and lack of due discretion of judgment.

Lack of due use of reason is the absence of competence to decide to marry in the generic secular sense. It is not often asserted as a ground for annulment, since most people who marry do have this basic competence. In Gutheil's and Appelbaum's terms,⁷ these individuals are aware of their situation, understand the relevant factual issues, and are able to manipulate information rationally toward a decision. The psychiatric conditions most often cited to support this ground for annulment are mental retardation and habitual psychosis.⁸

Lack of due competence is the term in the Code for those who, having already taken their marriage vow, then display a lack of ability to fulfill the

rights and duties of a truly Catholic marriage.⁸ However, the lack of due competence must be present at the time the marriage vow is taken. As would be expected, many psychiatric conditions such as personality disorders and psychoses contribute to lack of due competence. Even though a retrospective judgment about the lack of due competence is not made until after the marriage, the expert is asked to explain clearly whether the evidence buttresses the presence or absence of due competence at the time the marriage ceremony occurred.

Due discretion of judgment is also exercised at the time one decides to marry. The individual who lacked due discretion of judgment did not have an appreciation of marriage rights and duties as the Catholic Church understands and teaches them or may not have exchanged the vows fully and freely.⁸

A survey in 1979 found nearly 19,000 cases across the United States that were based on one or more of the three psychological factors; on 11,000 of these at least one expert consulted.⁹ At the same time another survey found that half of the tribunals in the eastern United States always or nearly always utilized expert consultation when deciding cases on the issue of lack of due discretion of judgment.¹⁰ Despite such volume, the psychiatric literature dealing with this area is sparse. To our knowledge, only four related articles have been published in the last decade.^{9,11-13} They have provided some details of various tribunal's procedures and their use of experts, mentioned ethical dilemmas, discussed

standards of evidence, and briefly described the requirements of due use of reason, due competence, and due discretion of judgment.

At present most annulment cases involving use of experts are based on an assertion that one or both parties lacked either due discretion of judgment or due competence, or both. In order to understand the basis for asserting a lack of due discretion of judgment, it is essential to grasp the rights and duties of marriage as taught by the Church and how the concept of judgmental capacity applies to them. We shall discuss these topics, illustrate them with examples of tribunal decisions, and suggest areas for the expert to explore when the lack of due discretion of judgment for marital consent is alleged in support of a petition for annulment.

Essential Rights and Duties of Marriage in the Church

The Church refuses to recognize civil divorce and forbids remarriage because the ecclesiastical understanding of marriage has requirements beyond those of state law. Beginning with ancient sacred scriptures, the Church continues to develop an understanding of marriage through experience. Theological and psychological writings document that experience,¹⁴⁻²⁰ and formal documents express the teachings that result.^{21,22} For example, the union of spouses reflects the image of God in the creation of humanity as male and female. It also expresses the union between Christ and the Church, and further enables each Catholic family to show and to experi-

ence the Church on a small and human scale.¹⁹

The Code of Canon Law itself conceptualizes marriage as a covenant between two persons who administer the sacrament to each other as they exchange vows.⁶ They pledge an exclusive heterosexual partnership and commit to a lifetime of total sharing for mutual good. This pledge includes welcoming children with loving affection and a commitment to raising them with attention to their material and spiritual needs. A commitment is made to indissolubility, regardless of how trying the relationship may later become. In essence, the Church expects each party to be totally frank with the other, to accept the other as a unique and independent individual, and to love with an exclusive and lifelong generosity.⁸

Clearly, the Church sets a high standard for marriage. It has been said to go against the grain of contemporary Western culture with its emphasis on immediate gratification.^{17,22} A marriage in the Church cannot be a thing of the moment. The promises made at the ceremony stem from a mutual consent that already exists and is ready to be publicly declared and celebrated. Before their wedding day, the parties will have already achieved, exercised, and demonstrated a free and total giving of themselves as persons to each other and a mutual receiving of this gift.⁸

A Canadian priest recently refused to officiate at a wedding when he developed doubts about the couple's ability to persevere as spouses and support each other's growth. In his view their relationship

lacked sufficient communication, mutual confidence, and a Christian basis to support marriage in the Church. Although his refusal did not prevent the couple from marrying outside the Church, it did stop them from attempting a Catholic marriage for which in his opinion they lacked both due discretion of judgment and due competence.²³

An understanding of what the Church means by marriage positions the psychiatrist to assess the parties' states of mind when they married. Psychiatric skills can then be applied to interpret developmental and behavioral data and to evaluate conduct before and during the ceremony. The possibility that the Church's view of marriage was not adequately understood can be assessed. If it was well understood, the expert must then evaluate whether the parties adequately appreciated and intended to carry out their obligations.

Due Discretion of Judgment

A decision to marry as the Church understands it requires an appreciation of the commitment to a lifelong total and exclusive sharing of oneself. The application of sufficient time and effort to make this decision clearly requires considerable maturity. The presence of psychopathology obviously confounds such a decision-making process.

The Church expresses this reality by saying that the decision to marry must be made with due discretion of judgment. This includes two aspects: a cognitive understanding of what a Church marriage requires, and a desire to ex-

change fully and freely the marriage vows as they are understood.^{8,24-26}

The extent of due discretion of judgment required for valid marriage is far more easily described than defined. In short it must be in proportion to the act itself of marrying.²⁷ It requires more than what is necessary to take out a mortgage or enter into a business contract, enlist in military service, or be fit to stand trial, but not more than adults ordinarily possess.²⁸ It can be roughly compared to what one must summon in order to serve on a jury or make out an advance directive popularly known as a "living will." It presumes having and duly exercising an ability to look well beyond the present moment in order to make a serious and lifelong pledge. This capacity is present in proportion to the individual's ability to weigh and choose prudently, to accept good advice, to reason clearly, to learn from experience, to formulate sensible goals, and to display qualities of foresight, insight, circumspection, deliberation, and appreciation.⁸

Discretion may be impaired by immaturity or psychopathology, or because of external pressures such as pregnancy. Infatuation may cloud the normal ability to reflect. Expectations of family, friends, and society may have an undue influence.

A diagnostic impression of mental disorder rarely, if ever, suffices to explain an absence of due discretion of judgment for Catholic marriage. The question remains one of the quality of the consent given in the act of marrying. The stage of the illness and degree of clinical com-

pensation must be evaluated. The nature and severity of personality traits or disorders must be assessed. Rather than leading directly to a finding, the diagnostic impression may serve only as a way to organize and interpret the evidence as it bears on the question of lack of due discretion of judgment.

Case Examples

Case 1 A 1980 Ohio case involved a bride with a diagnosis of multiple personality disorder.²⁹ She was raised in a chaotic household marked by parental quarrels, and was subjected to emotional and sexual abuse by her father. Despite his parents' objections, the groom continued the courtship for approximately two years, repeatedly patching over disputes and finally agreeing to marry when she threatened to end the relationship. When they married he was 21 and she was 19. He later described his attraction to his bride in mainly physical and rather juvenile terms. The couple had three children before divorcing after 13 years. A year later he petitioned for annulment.

There were mutual accusations of physical abuse, child abuse, drinking and infidelity, which went on for 10 years before the wife's emotional problems became clear following a brutal mugging. Her psychiatrist reported to the court's expert a long history of isolation and imaginary friends during childhood and continuous auditory hallucinations, consisting of voices arguing and telling her what to do. He offered diagnoses of dysthymic disorder, paranoid schizophrenia, and multiple per-

sonality. The husband presented as rigid, immature, and suspicious, with a poor perception of his own personality.

Convinced by direct observation of him and by his immature reasons for marrying, and by the picture of his wife as beset by continuous longstanding inner conflict, the tribunal annulled this marriage on the basis of both parties' lack of due discretion of judgment, as well as the wife's lack of due competence. The decision ordered both parties to have treatment before remarrying in the Church.

Case 2 In 1980, the Roman Rota, the Church's highest court, reversed the decision to annul of a local tribunal in Venice, which the regional tribunal had reviewed and upheld.³⁰ The case involved a 30-year-old groom and his 21-year-old bride who were married after an engagement of a few months. They had a son just over eight months later, but soon were complaining of incompatibility. They separated after another year, and the husband then petitioned for an annulment based on the wife's lack of due discretion of judgment.

Reviewing the medical reports submitted in the lower court, the Rota found that the wife suffered from a phobic neurosis which was episodic in character, as the husband's brother testified. She had sustained another relationship for five years, leaving it when she became engaged to her husband. Moreover, the wife had not been in treatment before the marriage, and relatives from both sides of the family described her as sound-minded except for an occasional fainting spell. She had made material

preparations for their new home and attended a prenuptial course.

The regional tribunal's expert raised the issue of the stress of the premarital pregnancy forcing the wedding, but the Rota did not find this a sufficient stressor. It found no evidence that the bride was the least upset on the day of the wedding. It was only after the marriage that she developed symptoms under the stress of a difficult pregnancy and trouble from her husband's relatives.

The Rota's review of the assessments of the four treating physicians and three experts is telling. Although their diagnoses varied somewhat, all assessed the wife's condition as not severe. In particular, the Rota pointed out that the regional tribunal's expert did not see the wife, and did not present a convincing connection between his assessment of her condition and his conclusion that she lacked due discretion of judgment. The Rota therefore concluded that lack of due discretion of judgment had not been proven and an annulment should not be granted.

Case 3 A year after they met, a 24-year-old groom and 17-year-old bride married in Dublin in late July of 1978, within a week of their discovery that she was pregnant.³¹ Their married life was unhappy from the start and made worse by the wife's drinking. She gave birth in mid-March of 1979, and two years later was hospitalized for treatment of her alcoholism. The disturbed, chaotic, and deprived character of her upbringing thus came to light, along with the impression that her marriage was a reaction to the lack of family support when

she became pregnant. Her alcohol abuse itself was seen as a symptom of an immature personality.

Her assessment and treatment did not improve the marriage, however, and separation came in 1981, followed by her petition for an annulment based on her own lack of due discretion of judgment. The tribunal utilized two experts, its own psychologist and a psychiatrist who treated the wife in the hospital. It also heard from both parties as well as several relatives.

The psychologist called by the tribunal noted that the petitioner, seven years after the wedding and following a significant amount of treatment, remained "an irritable, edgy, emotionally disturbed woman." These observations, together with what was known about the bride's early years, led this expert to an inference of gross immaturity at the time of the wedding. The psychiatrist's data supported this formulation, as did the information from the parties and their relatives. The tribunal, noting that it was speaking of a longstanding and continuing condition, concluded that the petitioner's "personality, at the time of marriage, was so affected by her immaturity that she was not able to exercise due discretion of judgment." It also decreed "that the plaintiff may not contract a further marriage unless and until she shall have satisfied the local Ordinary (Bishop) that she is now a fit subject for marriage." The regional tribunal upheld this result.

Discussion

Although the issue of mental capacity to enter marriage does arise in secular

courts, the expert who consults to the Church's marriage tribunals faces a unique challenge. In some ways, the task is similar to evaluating competency to author a will. For example, the individual in question is often not available for examination, and inferences must be made from statements of others, who often have an interest in the outcome of the proceedings. Both the marriage ceremony and the drawing up of the will have usually happened long before the expert becomes involved. Likewise, both those who marry and those who write wills may be subject to various external pressures. Also, after exploring diagnostic possibilities, one must link all the evidence to conclusions about a person's mental state.

However, the assessment of testamentary capacity is more limited and more concrete than the evaluation of discretion of judgment to marry in the Church. In order to assess fitness to author a will, one must evaluate the individual's ability to understand the nature and extent of his or her own assets, the persons who are the natural objects of bounty, and the nature and effects of drawing up one's last will and testament. The expert will be interested in such issues as whether the subject's mind was working clearly and freely, and whether the subject knew the relevant individuals and relationships, and what was happening during the process.

In contrast, marrying in the Catholic Church requires more than knowing generally what marriage means, understanding the ceremony and the participants' roles, and being able to take one's

part appropriately. In particular, one must exercise due discretion of judgment by demonstrating appreciation of the Church's teaching about the meaning of marriage, and free intention to express this appreciation as long as both spouses live. There must be a truly deliberate choice to make an exclusive life-long generative gift of one's self to the other. The canon lawyer Mendonca has called this "maturity of judgment," and described it as the ability to exercise critical evaluation of marital obligations.^{32,33}

In facing this task, the expert consultant is interested in the degree to which one or both parties knew and appreciated what they were promising to each other when they married in the Catholic Church. A fixed definition of criteria for evaluating the result is not available, in part because the Church's expression of her teaching on marriage will always continue to be refined. Nevertheless, quality control is exercised at a district level by regional tribunals that automatically review every affirmative decision for annulment and receive appeals from negative ones. In turn, the Roman Rota oversees the regional tribunals and is itself supervised by executives of an office known as the Apostolic Signatura.

Obviously, the act of exchanging marital vows in the Catholic Church, of becoming one flesh with another person, is not easily compared to the usual types of assessments carried out by forensic psychiatric consultants. Furthermore, the task of evaluating someone to determine a lack of due discretion of judgment is rendered more difficult when

direct examination is not possible. In that case, the expert must resort to reviewing records and testimony by third party observers to obtain information about the individual's general ability to function and relate, and on the history of the courtship, the ceremony, and later events. Obviously all has to be sifted for credibility, consistency, and relevance to the question(s) before the marriage tribunal.

When one or both parties can be examined, the expert's ground is firmer, although even in this case, the expert must still use recent information to reach an opinion about the subject's mental status in the past. Still, the actual examination provides an opportunity to explore the practical and reflective experience of life and the degree of self-consciousness that had developed before the ceremony. One can look for demonstration of an ability to appreciate and respect the partner as a person. One can ask how the parties intended to work out the various decisions about their relationship. This might include such issues as the values they did and did not expect to share, and whether they disclosed their vulnerabilities and their feelings about relationships outside their marriage. Were the partners ready to give and to accept exclusive possession of their bodies, and to cast their material fortunes together for life? Did they understand the responsibilities of child-raising? What did they know about the physical, emotional, educational, and spiritual needs that children have?

Not surprisingly, disagreements may arise. For example, Wrenn has suggested

that the exercise of mature judgment does not occur simply at the split second when two individuals exchange their marital vows.⁸ Consequently, he has argued that it is possible for an individual to have been drunk at the marriage ceremony and yet to have married with due discretion of judgment. Presumably the individual had prepared over time for the marriage and had evidenced the extent of knowledge about Catholic marriage described above as well as a freely expressed willingness to marry. Wrenn's position seems to discount the symbolic importance of the act of exchanging vows and contradicts the traditional approach of the forensic psychiatrist to assessing competence that is linked to a specific act. Other canon lawyers have openly disagreed with Wrenn.^{26,34}

To carry the example further, if an individual exhibited clear understanding of the implications of his or her decision to make a will during a six-month period, but is drunk at the very signing of the will, he or she would usually be considered incompetent. This position would seem tenable because an individual should maintain a clear mind to change his or her decision until the very signing of the will and also to evaluate new information that might come to light at the very moment the will is to be signed. In contrast, a valid decision to marry in the Church develops over time to become a stable state of mind and will that is attained with an understanding and an acceptance in proportion to what is expressed by the couple and enacted through the ceremony. In addition to the actual cases described

above, arguments such as this suggest some of the complexity faced by the expert in assessing due discretion of judgment to marry. A larger series of cases, presented in the canonical form that tribunal judges use to record their decisions, is available.³⁵

Canon lawyers are continuing to develop their understanding of how to apply clinical expertise to the legal questions involved in marriage annulment cases. Clearly, forensic psychiatrists who are so disposed can use their specialized experience to contribute significantly to the quality of this process. In pondering this choice it is crucial to keep in mind that to be effective in this specialized Church context the forensic psychiatrist must be flexible and recognize that the Catholic Church's values are the reference point from which a decision is to be made.

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