

regard to the nullity of matrimonial consent, since it was not the concession to a third party of the right to sexual acts ordered to procreation but was rather a mere abuse with respect to that right which was also conceded to the spouse. To put it more succinctly, the positive will to violate fidelity was not a motive of matrimonial nullity.

This juridical interpretation began to be called into question in the early 1960s. Several rotal decisions pointed out that from a practical perspective—in the real world—someone who excludes the *bonum fidei* does not do so, at least not normally, in order to take on new obligations, in this instance, to make a commitment to a third party different from the spouse to engage with her (or him) in acts ordered to procreation. On the contrary, he does so in order to liberate himself from an obligation, the duty of being faithful to his spouse, with a view to indulging in a disordered exercise of his sexuality. Also called into question was the exegesis of paragraph 2 of canon 1081 of the 1917 Code, from which it was inferred that the possible object of the simulation against the *bonum fidei* was solely the granting to third parties of the right to acts that are in themselves suitable for the generation of children. This right, canonists began to remark, was defined by the norm as perpetual and exclusive. A violation of its exclusivity could therefore be relevant, whenever it could be interpreted not as a mere abuse in fact but rather as a denial in principle of the exclusive character of that right. Fidelity, therefore—that is, the obligation to abstain from sexual relations with persons other than the spouse—could be the object of a simulation of consent that renders the marriage null, if it is denied as a matter of principle or if, through its prearranged violation, the result is a denial of the exclusivity of the right (which belongs to the spouse alone) to acts ordered to procreation.

Rotal jurisprudence of the last two decades [approximately 1977–1997] has arrived at a position that can be considered usual in this connection: not only does someone who intends to grant to others besides the spouse the right to acts that are per se suited to procreation commit a simulation of matrimonial consent, but so does someone who excludes the exclusivity of this right, claiming the option to engage in sexual relations with other persons besides the spouse.

Solely by way of example we can cite in translation¹ the words of a decision of the Roman Rota. After recalling the conciliar teaching that

¹ From the original Latin via Italian.

the intimate union resulting from the mutual self-gift of the spouses and also the good of offspring demand the spouses' total fidelity,² the decision states, "Today the distinction between the exclusion of the *bonum fidei* and the exclusion of unity is clear: the first implies the denial of the exclusive right to conjugal acts relative to the spouse, while the other intends to grant it to other persons."³

This interpretation is defensible also in light of the Code of Canon Law currently in force. It is true that the object of consent is described differently now as opposed to the time of the 1917 Code, that is, as the gift of themselves that the bride and groom present to one another for the purpose of establishing the marital bond between them (cf. can. 1057 §2), but it is also true that the perpetual and exclusive right to acts that are in themselves suitable for the generation of children must be included in the essential object of the consent, as a technical-juridical formality that brings about the conjugal gift of self. To put it more simply: In what exactly is the conjugal (spousal) gift of self manifested? It is achieved through (or at least also through) the pledge to make oneself available to the spouse—and only to him—for those acts that are in themselves suited to the procreation of children. Someone who wants to pledge to make himself available perpetually and exclusively for these acts with a third person (thereby excluding the "unity" of the marriage), and who claims in principle the authority not to observe the duty resulting from the exclusivity of that right (thereby excluding conjugal "fidelity"), gives not true matrimonial consent but rather an intrinsically defective consent that therefore does not give rise to the matrimonial bond.

This jurisprudential development has objectively contributed to a clearer conceptual distinction between the unity of marriage and the duty of fidelity; however, it must be noted that several questions still remain open.

In the first place, and from the perspective of terminology, when speaking about the *bonum fidei* one must carefully distinguish which aspect one means to refer to: the unity of marriage or the duty to respect the commitment to spousal fidelity. The above-cited rotal decision seems to try to reduce the expression *bonum fidei* to fidelity, but an unambiguous usage in this connection has not yet been established.

² *Gaudium et spes*, 48.

³ *Coram Colagiovanni*, February 2, 1988, *Decisiones seu sententiae* 80: 61.

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unity