

The Minimum Knowledge for Marriage
Canon 1096 in the Code of Canon Law 1983

Sylvester Ludovick Nitunga

Introduction

The institution of marriage has played a significant role from time in memorial in the bringing and upbringing of children and formation of a family as basis for a society. But in recent decades marriage institute started to face a significant challenge due to the increasing number of divorces caused by the rapid change of the life standard in the developed and the developing World (3rd World Countries). While in the developed countries, two types of marriages, namely civil and religious marriages are common; in most parts of Africa (e.g., in Tanzania), three types of marriage are commonly practiced, namely civil marriage, religious marriage and traditional marriage.

As a catholic priest from Tanzania, I have officiated tens of catholic marriages and joined the couples and their relatives in celebrating this moment of happiness in their life. Many Catholics prefer to contract their marriages in the Church because marriage officiated by a priest or a religious leader of a recognized religion in Tanzania is also recognized by the State. Priests and other religious leaders who help in marriages should possess a license from the state. On the other side of the coin, I have also endeavored to reconcile some of marriage couples whose marriages were in trouble and succeeded only with a few cases. As a pastor I was sorry to seeing some of these marriages ending up in divorce or annulment. Divorce and marriage annulment has psychological, social and economical consequences not only on the partners but more severely on the child or children if the couple has one.

This article "*The minimum knowledge of marriage according to the canon 1096*" is about catholic marriage controlled by the Laws of the Catholic Church (The Code of Canon Law). The article is divided into four sections. Section one lays down the words of Canon 1096 as stated in the Code of Canon Law 1983 and gives its juridical interpretation and explanation. Section two presents a concrete situation in the modern society "*Sitz im Leben*" in order to show different challenges this Canon faces today. Section three exposes the teaching of the Church; that is, different Church Documents and Legislations in relation to the canon 1096. And section four is a recommendation and the way forward toward stable marriages.

1. Canon 1096 of 1983 Code of Canon Law

This canon has two paragraphs. The first paragraph states: *For matrimonial consent to exist, it is necessary that the contracting parties be at least not ignorant of the fact that marriage is a permanent partnership between a man and a woman, ordered to the procreation of children through some form of sexual cooperation.* And the second paragraph states shortly that: *This ignorance is not presumed after puberty* (can. 1096, 1§2)

An act placed out of ignorance concerning something which constitutes its substance which amounts to a *conditio sine qua non* is invalid (can. 126). According to canon 1096, the substance of marriage is “a permanent partnership between a man and a woman ordered to the procreation of offspring by means of some sexual cooperation”. This canon legislates that the parties who wish to enter marriage must recognize that partnership (*consortium*) involves mutual cooperation, support and companionship. The parties must not be ignorant that this partnership has a stable relationship (*permanens*) and that marriage is heterosexual in nature i.e., between a man and a woman (*inter virum et mulier*). They must know also that marriage is intended for producing children (*Ordinatum ad prolem...procreandum*) by means of some sexual cooperation (*cooperatio aliquae sexuali*). Therefore a marriage can be nullified when one of the partners was ignorant of the elements listed above.

In Roman law and Canon law, if a person acts against the law due to his or her ignorance of that particular law, that person is still held responsible for his or her actions, because ignorance of the law excuses no one (*Ignorantia legis neminem excusat*). This argument follows for the reason that the laws function independently from the state of mind of the persons. Orsy justifies this idea as he writes “The reason for this rule is the need to uphold and to protect legal firmness and security. And if the operation of the said laws ordinarily depended on the knowledge or beliefs of the persons involved, there would be no end to uncertainties and litigations” (Orsy 1985, 34).

However, the Code of Canon Law legislates and puts its most important norm in the very last canon and echoes the salvation of souls as the supreme law “*Salus animarum suprema lex*” (canon 1752). From this point of view, the Church teaches her sons and daughters to prepare well those who wish to get married in the Church because of the complexity and challenges of life in today’s society as we shall see below.

2. Confusing and conflicting social customs of the Modern Society and its challenge to canon 1096

About stable relationship (Permanens)

The Code states that people who reach puberty age are presumed to have the above knowledge. However, this presumption can yield to the contrary proof today. The availability of easy divorce and the growth of the so called *divorce mentality* could lead to the ignorance about the permanence of the relationship. In Tanzania for example, there is a great mixture of Muslims and Christians. For Muslims; divorce or *Talaka* in Kiswahili; is a normal thing and is allowed by Islamic religion. The process of getting it from the Islamic tribunals; or *Mahakama ya Kadhi* in Kiswahili; is not complicated when one part has grounds to apply for it. In Tanzania, divorce or *Talaka* can be obtained in civil courts or in the Islamic courts. The life system of the Muslims whose religion allows to marrying up to four wives and of the tradition religion believers who also practice polygamy, has great impact on the understanding of the minimum knowledge of marriage as is stipulated in canon 1096 of the Code. Doyle supports this when he writes: “knowledge is obtained through formal instruction, observation of others, and experience. And people learn about marriage to a great extent from the society and immediate environment in which they live” (Doyle 1985, 779).

1970s a number of countries in the developed World have legislated to permit divorce. Today the only countries which do not allow divorce are the Philippines (though the Muslims have the right to divorce) and the Vatican City, an ecclesiastical State, which has no procedure for divorce. In recent decades is divorce on the rise both in the developed World as well as in the developing world like Africa. As outcome of growing divorce rate, the young generation indirectly learns that marriage *permanens* is insisted only by religious bodies like the Catholic Church. The difficulties in the process of marriage annulment in the catholic Church tribunals and the scarcity of trained officials in some dioceses in Africa is one of the many reasons why young Catholics avoid Church marriages and cohabit; and only approach civil or Church marriages, for a legal protection, when the partners expect a child. This wrong motive for marriage is part of the causes for the increase of divorce rate in the developed and developing countries.

In the developing countries are pre-marital relations apparently on the rise. And while this relationship is not legally binding, its termination is also easy. This habit can affect the

ignorance of permanence of marriage on such young couples when they marry. In the same line of thought Doyle writes:

Contemporary Western society no longer provides a consistent example of stable marriage. Numerous people are raised in single-parent homes, never living in the context of a community of life. Confusing and conflicting social customs and value systems can prevent a person from learning that the notions of permanent commitment and self-sacrifice are acceptable facets of life (Doyle 1985, 779).

Nature of marriage in the Code and the confusing Practices in the modern society

The presumed knowledge in the Code that marriage is heterosexual in nature between a man and a woman (*inter virum et mulier*) is challenged by today's accepted and legalized marriages between people of the same sex (homosexuals and lesbians). Such marriages are recently legally recognized by some states namely Netherland (2001), Belgium (2003), Spain (2005), Canada (2005), South Africa (2006), Norway (2009), Sweden (2009), Portugal (2010), Iceland (2010), and Argentina (2010). Apart from South Africa there is no other African country which officially recognizes same-sex relationship or marriages. Sheehy comments on this and writes: "the concept of a so-called 'marriage' between homosexuals or lesbian partners promoted by a minority in some modern, particularly Western societies is flagrantly contrary both to the law of nature and to Christian teaching" (Sheehy et. al. 1995, 613).

In most African countries where Christianity, Islam and tradition religion are main-stream religions, marriage of the same sex or same sex relationship is confronted with zero tolerance and is not legally recognize. In Uganda, for example, such people could face a capital punishment when convicted with such a relationship. This punishment was recently reversed by the Ugandan Parliament. However, economic powerful states pressurized the African governments to legalize and recognize same-sex relationships under the threat that those nations which will not abide to their wish will suffer from the deprivation of foreign Aid. Most African governments did not give in to this threat and remained stable with their stand. Odumase, a district pastor of the Church of Pentecost in Ghana responded to this threat by saying "This is a pure political racism and a very big insult to the intelligence of Ghanaians and Africans as a whole. It is sad and disappointing to witness the bad treatment meted out to some African states by some western counterparts in the name of aid." www.modernghana.com/news/359896/1, seen 17.06.2013

Sex reassignment surgery/Sex change surgery

This is an operation which is done to people who suffer from “gender identity disorder”. This surgical procedure changes person’s physical appearance and function of his sexual characteristic to that of the other sex. People who pursue such operation are referred to as transsexual or transgender. As these operations seem to gain momentum in the developed World, they pose a challenge to the teaching of canon 1096 which affirms that marriage is a permanent partnership between a man and a woman. The question whether a transgender is allowed to contract a marriage; i.e., when she/he announces herself/himself about his/her transgender quality; and whether the operation itself is or is not morally justifiable remain open in this article. However, whatever medical names will be given to these operations, the presumed knowledge as proposed in canon 1096 is challenged.

Test tube babies and surrogate mother

Test tube babies can be described as babies that are created in a test tube by taking one sperm cell and one egg cell and combining them. After the zygote has reached a certain maturity is then implanted into a surrogate mother. The surrogate mother then receives a child which is not hers and carries her in her womb and then gives birth to this child. But the fact is that the surrogate mother has no genetic relation with this child. This procedure goes also against the presumed knowledge of canon 1096 which asserts procreation of children through some form of sexual cooperation between a man and a woman.

3. Importance of marriage preparation

Preparation of marriage in the context of African culture (Tanzania)

The preparation of marriage for the young people before entering into marriage is enormously important. In those societies where this provision is provided, the cases of divorce are minimal. In my village in Tanzania, for example, young people who reach the age of puberty are prepared for marriage through *Jando* (which is a class session special for the boys) and *unyago* (which is a class session special for the girls). This type of marriage preparation is known as community-based preparation. The young girls and boys are instructed on their obligations as future parents and how to value and protect the institution of marriage when they enter into it. The duration of instruction lasts for one month. This instruction is carried out during harvest time and schools holidays. At the end of the training a great celebration is held for the participants in the village.

Another type of marriage preparation is that which takes place in the Church in the form of conferences, meetings or discussions. They are referred to as Pre-Cana Conferences. In almost every diocese there is a team of chosen laymen and women with good reputation and professionalism and they engaged in such work, as marriage counselors, psychiatrists, psychologists, or at least marriage couples with experience. They give information about the Church teaching on marriage as a sacrament and on marriage law and attempt also to pass on information on economical aspects of married life. They give also explicit advice on sexual relations. For the young people who are a little bit educated are instructed to continue educating themselves through self-directed means in the form of books, internet sites and online courses which are available in the country and abroad. These forms of Marriage preparation bring measurable benefits. These benefits include better communication and conflict management skills, more dedication to one's mate, greater positivity in marriage, and reduced chances for divorce.

Other canons and documents on marriage preparation

Canon 1063 calls upon the pastors of souls to provide the Christian's faithful with the assistance by which a married state is preserved in its Christian character and develops in perfection. This assistance is to be given principally: by preaching, by catechetical instruction adapted to children, young people and adults. And by the help to those who have entered marriage, so that by faithfully observing and protection their conjugal covenant, they may day by day achieve a holier and a fuller family life (can. 1063). In the same line of thought the Instruction *Dignatis Connubii* teaches: "The dignity of marriage...which is the image of and the participation in the covenant of love between Christ and the Church, demands that the Church with the greatest pastoral solicitude promote marriage and the family founded in marriage, and protect and defend them with all the means available" (Lüdicke et al. 2006, 2).

The Code of Canons of the Eastern Churches sometimes referred to as *Codex Canonum Ecclesiarum Orientalium (CCEO) 1990*, teaches almost the same as in the Code of Canon law of the western Latin Church famously known as *Codex Iuris Canonici (CIC)*: "For matrimonial consent to be valid it is necessary that the contracting parties at least not be ignorant that marriage is a permanent consortium between a man and a woman which is ordered toward the procreation of offspring by means of some sexual cooperation." (can.819).

Pope John Paul II teaches the necessity of preparing the young people before entering marriage because of the most modern influences which reach the young ones through

television, radio, music, publications and has a character averse to the requirements of marriage. In his Apostolic Exhortation *Familiaris Concoertio* he writes:

More than ever necessary in our times is preparation of young people for marriage and family life. In some countries it is still the families themselves that, according to ancient customs, ensure the passing on to young people of the values concerning married and family life, and they do this through a gradual process of education or initiation. But the changes that have taken place within almost all modern societies demand that not only the family but also society and the Church should be involved in the effort of properly preparing young people for their future responsibilities. Many negative phenomena which are today noted with regret in family life derive from the fact that, in the new situations, young people not only lose sight of the correct hierarchy of values but, since they no longer have certain criteria of behavior, they do not know how to face and deal with the new difficulties. But experience teaches that young people who have been well prepared for family life generally succeed better than others (Paul II 1981, 66).

The Pope suggests a plan of preparation in three steps namely; Remote preparation, proximate preparation and immediate preparation. Remote Preparation is viewed to start in infancy and focusing on sound psychological environment, in a religious ambient. The proximate preparation will assign marriage among the sacrament which are the sources of divine grace; and the immediate preparation which prepares the future spouses, during months or weeks preceding the wedding (Pospishil 1996, 487).

The Catechism of the Catholic Church (CCC) reflecting on the importance of preparing the young people before marriage due to the confusing and conflicting cultural and moral behavior in the liberal and developed societies as it teaches:

That the "I do" of the spouses may be a free and responsible act and so that the marriage covenant may have solid and lasting human and Christian foundations, preparation for marriage is of prime importance. The example and teaching given by parents and families remain the special form of-this-preparation. The role of pastors and of the Christian community as the "family of God" is indispensable for the transmission of the human and Christian values of marriage and family, and much more so in our era when many young people experience broken homes which no longer sufficiently assure this initiation: It is imperative to give suitable and timely instruction to young people, above all in the heart of their own families, about the dignity of married love, its role and its exercise, so that, having learned the value of chastity, they will be able at a suitable age to engage in honorable courtship and enter upon a marriage of their own (Catechism of Catholic the Church, 1632).

Gadium et spes, in Vatican Council II calls upon family members to fulfill the responsibilities by educating their young ones about valuables of marriage and its permanence nature. Furthermore the Council fathers call upon the experts in different fields of science to help in this function as it reads:

All those, therefore, who exercise influence over communities and social groups, should work efficiently for the welfare of marriage and the family. Public authority should regard it as a sacred duty to recognize, protect and promote their authentic nature, to shield public morality and to favor the prosperity of home life... It devolves on priests duly trained about family matters to nurture the vocation of spouses by a variety of pastoral means, by preaching God's word, by liturgical worship, and by other spiritual aids to conjugal and family life; to sustain them sympathetically and patiently in difficulties, and to make them courageous through love, so that families which are truly illustrious can be formed. (*Gaudium et spes*, 52).

The Church in Austria and the marriage preparation

The Bishop's Conference of Austria has officially recognized the group which is called "*Gemeinschaft Salvatorianischer Laien Österreich*" (*GSL-Österreich*), as a group which has the mandate to give marriage seminars for the people who prepare themselves for the sacrament of marriage. (www.erzbistum-paderborn.de/.../standards-Ehevorber), seen 17.06.2013). In the same document, the bishops laid down the Standards of marriage seminars according to the teaching of the Church that all who give marriage seminars should follow: Marriage in the plan of God; as man and woman created are they called to start a family; Marriage as Sacrament; Sexuality in the marriage life; Responsible Parenthood; Methods of Family planning; Protection of Life from Womb to Tomb; Communication in the Marriage life; and Obligation of marriage people in the society and in the Church.

Conclusion

The presumed minimum knowledge of marriage as proposed by canon 1096 has a number of challenges in the modern society as cited above. The escalating number of divorces and the single parent mentality, the officially legalized and acknowledge same-sex relationships and the sex change surgery pose a great threat to the institution of marriage for the young generation. "Many worry about the negative economic consequences of divorce for women and children, and there is some evidence that more liberal divorce laws have negative effects on long-term outcome for Children." (Gruber, 2004)

Marriage is a lifelong commitment, and so it needs a very serious preparation. It requires not only an intellectual preparation but also a holistic preparation of the whole human personality, which includes also some cultural and religious phenomena. Marriage is and will always remain a mystery of life which is understood by those who experience it. The mystery lies in the fact that also the marriages of psychiatrists, psychologists and marriage counselors fail as often at least as of those who have no knowledge and schooling in these areas at all. Pospishil concretizes his argument and writes “It does not depend on the level of education that the partners have but on factors inherent in the personality structure of them. These personality determinants are deep-seated, formed in infancy and childhood and are not correlated with intelligence or schooling” (Pospishil 1996, 487).

Although marriage preparation cannot completely do away with divorce problem, but a good marriage preparation can however minimize the alarmingly and escalating divorce boom we are experiencing now in our modern society.

The Pontifical Council for the Family teaches that the centre of marriage preparation ought to be a manifestation in the faith on the sacrament of marriage through the word of God and the guidance of the *Magisterium*. The betrothed should be made alert that to become “*una caro*” (Mt. 19:6) in Christ through the Spirit in Christian marriage, means imprinting a new form of baptismal life on existence (Pontifical Council for the Family 1996).

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