

# The Importance of Consent and the Consequences of the Exclusion of Fidelity in Marriage

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## 1. Introduction

Christian marriage is a union between a man and woman and begins by an exchange of consent; lasting their whole life's long. It is a very important concept both in the Church and in the society. The concepts 'consent and fidelity' are very important in the discussion of this marital relationship between man and woman. This article will deal with the importance of these concepts in Christian marriage and the grave consequences of the exclusion of fidelity from the marital union. But to understand clearly the issues involved in this article, we shall need to elucidate the following necessary and consequential ideas:

- Christian concept of marriage
- The importance of consent in marriage and the consequences of its lack
- Simulation of consent
- Fidelity and infidelity in marriage
- Exclusion of fidelity in marriage
- African view point

## 2. The Christian concept of marriage

According to the 1983 Code of Canon Law, "Christian marriage is a '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" (Can.1055§1). The phrases: *Partnership of their whole life* and *well-being of the spouses* define the essence of Christian marriage and distinguish it from other forms of life companionships. A good understanding of these two phrases is necessary especially today when, "the dignity of (marriage) ... is overshadowed by polygamy, the plague of divorce, (the) so called free love, and similar blemishes (and) furthermore (when) married love is too often dishonoured by selfishness, hedonism, and unlawful contraceptive practices" (Gaudium et Spes, 47).

The history of the Christian concept of marriage should necessarily begin with the injunctions of Christ on marriage. The union between man and woman which from the beginning of creation gave rise, most often to a new family, was raised by Christ to the status of a sacrament (Can.1055§1). It has its origin in God and is modeled on the union between Christ and his Church. “Authentic married love is caught up in divine love and is directed and enriched by the redemptive power of Christ and the salvific action of the Church, with the result that the spouses are effectively led to God and are helped and strengthened in their lofty roles as fathers and mothers” (Gaudium et Spes, 48). St Thomas belonged to the camp of those who hold that Christian marriage belongs to natural law (Aquinas, Summa Theol., 49, Art 3). Along this line, the fathers of the second Vatican council declared that “God himself is the author of marriage and has endowed it with various benefits and with various ends in view” (Gaudium et Spes 48). So, for the Church, marriage is not just of ecclesiastical and civil law, but principally of natural and divine positive law (Woestman, 2003, 68).

The second Vatican council fathers maintain that the Christian family springs from true love which exists only in marriage (Eph 5: 32), which is an image and a sharing in the partnership of love between Christ and the Church; it will show forth to all men, Christ’s living presence in the world and the authentic nature of the Church by the love and generous fruitfulness of the spouses by their unity and fidelity, and by the loving way in which all members of the family cooperate with each other (Woestman, 2003, 68).

Christian marriage demands of the couple a commitment to themselves to an indissoluble union and to mutual fidelity (Coriden et al. 1999, 737-738). When the couples stay together their whole life long, they create a conducive atmosphere for the proper training of their children. Each of the parents imparts on their children his or her unique personality. While the father with his masculine nature strengthens the children, the mother adorns them with her feminine love.

Apart from the terms “unity and indissolubility”, *mutual respect, fidelity and consent also constitute the beauty of the Christian marriage*. In discussing further the issue of exclusion of fidelity in marriage, we need at this point to discuss the issue of *the importance of consent in marriage* because it is in the process of giving consent during marriage ceremonies that some people likely intentionally exclude fidelity in their marriage vows.

### 3. The importance of consent in marriage and the consequences of its lack

The giving of consent constitutes a very essential part of the Christian marriage. There can be no Christian marriage without a freely exchanged consent between a Christian man and a Christian woman. The word “consent” can be traced to the word “consensus” which means conformity of the will of at least two persons on one and the same object. (Listl et al. 1999, 927). The word can also be traced to the Latin word ‘consentire’ which stems from the words ‘con’ - together and “sentire” - ‘feel’. That means, feeling together. It ordinarily means to give permission for something to happen or to agree to do something. (Oxford Dictionaries, 2010, 1090) In scholastic categories, consent result from the combined action of the cognitive, deliberative or critical and volitional faculties (Coriden et al. 1999, 774). That is why the fathers of the second Vatican council said that matrimony is rooted in the contract of its partners. That is, in their irrevocable personal consent. It is an institution confirmed by the divine law and receiving its stability, even in the eyes of society, from the human act by which the partners mutually surrender themselves to each other (Gaudium Et Spes, 48).

The 1983 Code of Canon Law speaks of the marriage consent as follows: “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” (Canon 1057§1). In the issue of consent, many theologians speak first about the pre-condition of a lawful Christian marriage. For a lawful Christian marriage to take place, “it is enough that there be an intention of the couple to enter into a true marriage; that is that they commit themselves through an irrevocable consent to live together throughout their life time” (Listl et al. 1999, 894). It is to be noted that consent is not simply a juridical act whereby the spouses exchange rights for specific things. It is their freely chosen entrance into a covenant of the whole of life (Coriden et al. 1999, 775).

Matrimonial consent is a human act and not an act of man. A human act is an act which a person performs with full consciousness. It is a full and deliberate act performed willfully and voluntarily without duress. An example of a human act would if one willfully goes to the football field to play football in order to keep fit. On the other hand, act of man is an instinctive act done without reasoning, for instance one crying as a result of pain or a child sucking its mother’s breast because it is hungry. Matrimonial consent belongs to the order of human act because it stems from a full deliberation of the will and results from freedom of choice. If any of the consenting partners at the time of giving consent is unable to make a human act or lacks sufficient reason for such decision, then, the consent is invalid. Mental

illness when it existed at the time of giving consent precludes the possibility of a responsible act. Those who, at the time of the wedding, lacked consciousness due to alcoholic intoxication, or the sickness of epilepsy etc, marry invalidly although they had the intention of marrying prior to the ceremony. Pope John Paul II made a further clarification of the Church's teaching on consent. According to him, the act of the gift of oneself in a total oblation by means of which consent is given in time but has a value in eternity. If a gift is to be total, it must be irrevocable and without reserve. If one grants to the other person a right, it is because one wishes to give oneself; and one gives oneself with the intention of obliging oneself to carry out what is required by the total giving one has freely made. (Woestman, 2003, 173). Marriage consent is a whole life's decision and should come from both the man and the woman.

Matrimonial consent is not only the indispensable condition of marriage, but also its efficient cause and includes two things: the inner desire to contract marriage, and the legitimate manifestation of will between legally competent persons. (Woestman, 2003, 173). In Christian marriage, the lack of consent can result from the following: the lack of minimum knowledge of what marriage is all about, fraud, the defects in the will, conditional marriage, the marriage under absolute or relative compulsion or constraint, mental disorder and total/partial simulation (Heimerl et al. 1983, 216-232). A simulated consent is no consent at all. But what is simulation?

#### 4. Simulation of consent

The traditional Jurisprudence of the roman Rota explains simulation as the co-existence of two acts of the will: the external which says "I will" and the internal act which says "I won't" to marriage. Exclusion of fidelity is a positive act of the will because the simulator internally rejects marriage outright while participating in the marriage ceremony for ulterior motives contrary to marriage. (Heimerl et al. 1983, 216-232). The good of fidelity is excluded not by a mere intention to commit adultery but also by a firm and specific refusal to make a complete donation of self, that is to say, by a reservation made by a positive act of the will to conduct oneself with others according to one's pleasures, or by a firm intention at the time of the wedding to give the entirety of one's body to a lover with whom the contracting partner had entered a binding relationship prior to marriage. Even less so is the good of fidelity excluded

by a man who, because of his excessive love of women or attraction to the opposite sex, merely foresees that he will commit adultery (Wrenn, 2002, 55).

The concept of simulation is important because it touches on the very act of the will by which marriage comes into being (Wrenn, 2002, 55). The consent is an act of the will and as such it is internal. The spouses must express their commitment to each other by means of words or signs which are perceivable to the senses, usually by pronouncing the marriage vow. In Christian marriage, there must be a presumption of conformity between the internal intention and the outward expression because no one but the Spouses can give consent to marriage (Wrenn, 2002, 55). But we may ask: Why must the external expression of consent not be presumed to conform with the intention to the will? This presumption existed up until the 13 century's publication of the papal decree „Tua nos“ in which Pope Innocent III (1198-1216) declared invalid a marriage in which man exchanged consent, not for the purpose of marriage but for reasons deemed contrary to Marriage (Wrenn, 2002, 55). Consent in marriage gives each of the partner exclusive rights to demand total fidelity from his or her partner.

## 5. Fidelity and infidelity in marriage

The marriage covenant is in the first place ordered to the well-being of the spouses and then to the procreation and upbringing of children (Can.1055§1). Both contracting parties to matrimony receive by the fact of this canon and by the fact of their exchange of matrimonial consent the exclusive right and obligation to give and receive the conjugal debt of their partner. Holy Scripture holds that the creator has created them male and female and because of this, 'it is not good that man should be alone' (Gen.21:18). It further holds that 'the man shall leave his mother and father and will become one flesh with his wife' (Gen. 2.24). Conjugal love involves the community of soul, mind, heart and body ( Listl et al. 1999, 886). Married love is a mutual self-giving of the spouse to each other. The fathers of the second Vatican council in 'Gaudium Et Spes' spoke extensively on the nature of married love with special emphasis on the intimate love which should exist between them. This intimate partnership is rooted in their exchange of their irrevocable personal consents: "I... take you...to be my lawful wedded husband/wife. I promise to be true to you in prosperity and in adversity; in sickness and in health ... till death do us part". So declare the couples while exchanging consent. "The intimate union of marriage as a mutual giving of two persons, ... demands total fidelity from the spouses and requires an unbreakable unity between them" (Gaudium Et Spes 48). The second Vatican council fathers declared further that married love

is uniquely expressed and perfected by the exercise of the acts proper to marriage. Hence, the acts in marriage by which the intimate chaste union of the spouses takes place are noble and honourable: the truly human performance of these acts fosters the self-giving they signify and enriches the spouses in joy and gratitude. Endorsed by mutual fidelity and, above all, consecrated by Christ's sacrament, this love abides faithfully in mind and body, in prosperity and adversity and hence excludes both adultery and divorce (Gaudium Et Spes, 49). A question could here be asked why it happens that some people after giving their consent to their partner go ahead to be unfaithful. The situation is further worsened when one intentionally excludes fidelity in his mind while at the same time pronouncing to his or her partner: "I will be faithful to you in prosperity as well as in adversity".

One could exclude fidelity in marriage while pronouncing same publicly in a marriage ceremony. But this is a very difficult situation to determine. Let us examine more closely what the term: "Exclusion of fidelity" really means.

## 6. Exclusion of fidelity in marriage

Exclusion of fidelity is very closely tied to the themes: simulation and consent. Canon 1101§2 elucidated that: "if either or both of the parties should by a positive act of will exclude marriage itself or any essential element of marriage or essential property, such party contracts invalidly". The essential properties of marriage are 'unity and indissolubility', while the essential elements or the ends of marriage include 'the good of the spouses (Bonum Coniugum) as well as the procreation and education of offspring' (Canons 1055 and 1056). These essential properties and essential elements of marriage are intended towards the unity of the couples and exclude every form of plurality as in the case of polygamy and polyandry as seen in some cultures. "The community of life is based on and needs total human fidelity for its existence and growth. This is not simply the absence of extra-marital sexual involvement but fidelity to the interpersonal relationship. When we talk of the community of life, we are talking of the total gift of self which cannot be divided. It must be given and continuously expressed to one person. Fidelity is not possible without unity; that is, one partner with whom to share one's life" (Coriden, 1999, 742). The issue of the exclusion of fidelity here does not treat of the question whether adultery is a ground for Annulment of marriage or not. Such question still borders some minds but "contemporary biblical scholarship seems to hold that *porneia* used in the gospel according to Matthew (19:9)

referred not to adultery but to marriages within forbidden degrees of blood relationship” (Coriden, 1999, 742).

The exclusion of Fidelity is a form of partial Simulation. We distinguish here *between total and partial simulation*. In *total simulation*, one excludes entirely the issue of marriage itself. An example of this situation would be for instance a situation where a foreigner in Austria fakes or simulates marriage with an Austrian woman only in order to get the citizenship-documents of Austria. In this case, this foreigner goes through the whole process of matrimony without the right intention of getting married but only with the intention of getting the citizenship documents. But the exclusion of fidelity is a form of partial simulation because the simulator does not exclude the idea of Marriage entirely but excludes one of its essential elements – the good of the spouses (Bonum Coniugum). He excludes ‘Bonum Coniugum’ because while pronouncing fidelity to his intended wife, he intends to retain an extra-marital relationship. It is one of the traditional grounds of nullity (Tierney, 1993, 85). Those going into marriage in today’s contemporary world are influenced in their choice of their partners by a whole lot of socio-economic, cultural and religious diversities. Since the sexual revolution that engulfed the world in modern times, the actual Christian understanding of marriage is misunderstood and wrongly accepted by many modern minds. So in their selfish tendencies, these modern people try to exclude some of the essential properties of marriage. We shall attempt an example of the exclusion of fidelity in marriage.

An example of the exclusion of fidelity would be for example, if a man had a girl friend prior to his marriage and used to have a sexual relationship with her and later decided to enter into marriage but with the intention of continuing his relationship with his former girl friend, he contracts marriage invalidly. This is because, although he had verbally exchanged a marriage-vow with his wife at the altar, the external pronouncement was not followed by an internal commitment. This case is an example of simulation which invalidates marriage. By his action, he excludes the right of his partner to an exclusive sexual conjugal relationship that is to his fidelity which is fundamental to Christian marriage. This situation is not to be confused with an extra-marital affair or what some authors call ‘Mid-life crises’ (Tierney, 1993, 85). Since the act of exclusion of fidelity or simulation involves an internal act, its external proof is always difficult. However, an author said that repeated adultery on the part of the alleged simulator both before and after marriage is often the principal argument of the exclusion of fidelity. But he offered three possible points that could be used as a proof to the fact of exclusion of fidelity.

The first point is the confession of the simulator. If during the trial process the simulator makes statements that give the clue that he had been in the act before marriage and had continued it after marriage, it is a strong proof of exclusion of fidelity. If there are also valid testimonies in the form of tapes, videos, or other records that prove the same point, these are still valid proofs.

The second point is a grave and proportionate motive of the Simulator. If the Simulator's reason for contracting the marriage with his partner was just to please his parent and avoid some family squabbles but after the marriage, he goes on having an affair with his ex-girl friend, it is a good proof.

The third point involves the circumstances that are antecedents to, concomitant with and subsequent to the Marriage, which show that Simulation is not only possible but morally certain (Wrenn, 2002, 56). An author's opinion is that one simulates consent and excludes the 'Bonum Fidei' not only by giving to some third persons a certain right to one's own body, but also when one intends to give to the spouse a right but not an exclusive right or when one intends to give the right to no one, neither to the Spouse, nor to the third person nor to anyone else (Wrenn, 2002, 56).

## 7. African view point

Despite the effects of secularization and civilization which are sweeping across nations today, marriage and family ties are still very strong in Africa. The right to fidelity is fundamental to marriage. It is a very strong point in the marriage-tradition of Africa. In the Igbo traditional cultural area of Nigeria before her contact with colonization and Christianity, fidelity played a vital role in marriage. The husband and wife swore an oath of fidelity to one another before they came to live together. If any of the parties contravened the oath, the action was punishable by death. Even in the case of polygamy or polyandry, it was always the agreement of both parties to marry a second wife/husband, either for the sake of fecundity, the expansion of the family size or the accumulation of more wealth for the family. If it was found out that either of the parties was involved in a relationship with a person of the opposite sex prior to marriage and was caught continuing in that old relationship by committing adultery with the ex-girl or boy-friend after marriage, the marriage was usually either dissolved or the culprit put to death.

But since the contact of the African culture with other foreign cultures things are no longer the same. There is a lot of mixture of thoughts and motives. In Africa the problem of exclusion of fidelity in the giving of the marriage consent can be noted in the motive of the simulators. In some African cultures, there are arranged marriages. Parents pre-arrange suitors for their daughters or wives for their sons. These are sometimes done by kings or rich families who would want to establish or maintain the link with other nobles. In the past this worked for most people but today, most young people would want to make their personal choices of who their partners would be. Sometimes this creates tension in the family. Some parents go to the extent of denying their children right of inheritance of their properties if they fail to marry a man or woman of their choice. Some young people may agree to the arrangement just to get access to the family inheritance but if they had girl friends, some of them still kept on the old relationship. They would go through all the rites of marriage, make marriage promises but at the end, would fall back to their old friends. This is an example of a case where people could exclude fidelity while pronouncing the same verbally during marriage.

Apart from this pre-arranged marriage situations, there are some cultural reasons why some young people who fall in love may be prevented from getting married to one another. For instance some caste systems disallow marriage between certain groups of people. In the Igbo cultural situation there is the Osu-Caste-system – people whose fore-fathers were believed to have been given over to deities. Their children are not allowed to pick their wives from free-born families. Even though Christianity has dealt a big blow to this cultural system, it still exists in some places. In this age of communication, some young people meet each other outside their traditional homes and decide to marry. If their parents forcefully give them to marriage to someone else due to this caste-system, the tendency is there that they would only literally get ‘wedded’ but later stick to their old love. If some lovers are prohibited from getting married to their lover and forced into a new marriage that are not their choice, such young people may go through marriage ceremonies intending to keep their old friends. This we call exclusion of fidelity in marriage.

Polygamy is an inestimable cultural value in Africa. It is a great pastoral problem to many African pastors. The laws of the land allow men to marry more than one wife but at conversion to Christianity, they are expected to send away other wives retaining only one. It is a temptation to some Christian converts who due to their new found faith must keep to only one wife. If out of attraction to the Christian faith some polygamists send away their wives

and during the exchange of consent, they promise to be faithful to their lawful wedded wives but thereafter, some go back to their former polygamous lives; this may be classified as an African form of exclusion of fidelity in marriage. The Christian marriage-law teaches an undiluted and unflinching fidelity to one's partner which is the greatest source of joy in Christian marriage.

## 8. Conclusion

The Church defends Christian marriage not just because it is ecclesiastical but because it is also civil, natural and comes from divine positive law. The union between man and woman which gives rise to the human family is worthy of defense and protection because the human family is the cell or nucleus of society. Everything found in the larger society takes its root in the human family. It is my opinion that if the human family is reduced to a mere contract which is entered into and dissolved at will, then the human society would be heading for ruin. The exclusion of Fidelity in the Marriage-contract makes the relationship false and paints the picture of lie and forgery. Marriage may be a difficult union but we must remember that Fidelity means faithfulness. It demonstrates loyalty and support. It speaks of the Phrases: "I believe in you", "I give myself entirely to you", "I am true both to you and to myself", "I have nothing to hide from you". This is what marriage should be.

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