Force or Fear: Diminished Freedom

In considering the ground of force and fear, c. 1103: “A marriage is invalid if entered into because of force or grave fear from without, even if unintentionally inflicted, so that a person is compelled to choose marriage in order to be free from it”, the issue is a lack of freedom of choice. We read in one decision from the Rota: “the reason for the nullity of a marriage entered because of grave fear is based not so much on the reparation of grave injury, but on the lack of sufficient freedom of choice” (Coram Boccafola, 21 February 1991, n. 5).

Force vs Fear

Canon 1103 implies a distinction between “force” and “fear”. Although this distinction is logical, the practical usefulness of the canon pertains to fear or coercion to enter into marriage. Force is an exterior pressure from a greater thing that cannot be resisted (i.e., physical/ablative force). An example of forced consent would be when a party is induced by hypnotism or some chemically induced state to give matrimonial consent. Fear is a trepidation of the mind caused by an immediate or future danger or evil (i.e., coercion). An example of coercion through fear is when consent is induced from the threat of violence.

Reverential vs Common Fear
The jurisprudence of the Roman Rota has identified three types of fear which can invalidate matrimonial consent. Invalidating fear can be Common, Reverential or Mixed. Common fear is that which arises from a threat of violence. Reverential fear is that which arises from the threat of indignation from those whom one owes obedience and reverence. Reverential fear requires:

1) Fear of a parent or superior (respected person).
2) The source of fear is the parent’s or superior’s indignation.
3) The indignation must be foreseen to be grave and long lasting.

It can be difficult to distinguish reverential fear from parental help in making a decision. We read in one decision: “But it has to be noted that pleas or persuasions are inappropriate, if they do not allow space or quiet and are so insistent that they have the effect of oppression and vexation or extortion” (Coram Boccafola, 21 February 1991, n. 7).

The Gravity of Fear

There are several factors to consider when evaluating the gravity of fear. The fear must be based on an objective fact for it to be grave. Fear which is based on the imagination alone does not constitute grave fear. The gravity of fear must be evaluated both in terms of its objectivity and subjectivity. Objectively, the gravity of the fear depends on the nature and quality of the evil threatened. Subjectively, the gravity of the fear depends on character of the one threatened. The gravity of the fear “must be derived from the sum of the objective and subjective elements” (Coram Boccafola, 21 February 1991, n. 6). Also, the character of the one making the threat must be evaluated. The fear is grave if the one making the threat is capable of executing the threat. Also, there must be certainty or probability that the threats will be fulfilled.

Fear from without

There must be a subjectively perceived threat of evil from some external source. If the fear originates only from within the person, then this should be considered under canon 1095. The external source must be free, i.e., it proceeds from a human being. Fear of a natural disaster or an illness does not qualify as fear under canon 1103.

Fear Must Cause the Marriage

Aversion is the best indicator of ex metu consent (consent from fear). A proven aversion to marriage suggests that the marriage was motivated from fear. However, “the presumption which arises from aversion does not lead to certitude unless the contractant is proved to have consented to marriage unwillingly because of grave extrinsic coercion” (Coram De Angelis, 5 November 2003, n. 6).

Proving Invalidity because of Fear

Fear invalidates matrimonial consent when it leaves the person with only one viable solution: marriage. If there is some other option available other than marriage, then the consent was cum metu (with fear). “Fear is the efficient cause of the matrimonial contract only if it has the force of the motivating, principle and dominant cause in the choice of marriage, and it is perceived to be the only possibility of escaping the threats” (Coram Boccafola, 21 February 1991, n. 6).
We read in one decision from the Roman Rota:

“According to the established jurisprudence of this Apostolic Tribunal, the elements of proof of the nullity of marriage on the ground of fear seem to be the following:

1) The credibility of the petitioner;
2) The contractant’s aversion to his/her spouse or to contract marriage with that spouse;
3) The deposition of the victim of fear;
4) The deposition of the person inflicting the fear and his/her character;
5) The deposition of witnesses who had the knowledge of the consent given under fear;
6) The circumstances which render credible the consent given under fear” (Coram De Angelis, 5 November 2003, n. 8).
What is marriage? This foundational question is easily passed over by ministers of the Church, who instinctively presume to know the answer, but who, in fact, have only a general and vague notion of marriage. The essential nature of marriage must be properly understood in order to avoid certain practical pastoral problems. Does a certain man need a declaration of nullity before we can bring him into the Church? Does a certain woman need to have her marriage convalidated? The answers to these and many other concrete questions are often resolved by means of carefully thinking about the nature of marriage.

Marriage is a certain kind of relationship between a man and a woman. This relationship is unique in that it involves the man and the woman living together, uniting their lives, and having a mutually faithful sexual relationship which is open to children. This relationship is also stable and permanent, lasting until death.

The relationship which we call marriage is recognized by law. The law in question may be the American system of law, various other secular systems of law, or even canon law. However, the law merely discovers marriage, as a natural element of human life, and provides legal protections...
and regulations for it. Marriage does not spring from the positive law, itself, as from a source. Marriage exists independently from the positive law.

At the most fundamental level is marriage merely a relationship? According to our secular culture, marriage is merely a relationship which enjoys legal recognition. In our culture, the relationship is the fundamental reality of marriage. Such an approach to marriage is off track from the beginning, and can lead to many errors. For example, just as the parties themselves are responsible for creating the relationship, so too can the parties determine when the relationship comes to an end. Therefore, marriage is nothing more than a bi-lateral pact between parties which can be dissolved at will. Similarly, since marriage is merely a relationship which enjoys legal recognition and this legal recognition is itself a construct of our laws, the court system can decree that a certain relationship no longer enjoys the status of marriage, as happens in the case of a divorce. These ideas, although erroneous, are common in our society.

Marriage is not just a relationship. There is a deeper ontological reality to marriage. Marriage is not just a relationship, but also a relation. A relation is an ontological category of being-referred-to-another. The distinction between a relationship and a relation is seen clearly in the case of a father and son. A father and son enjoy a unique relationship between them. The father cares for, raises and educates his son. The son listens to, follows, and is cared for by the father. This relationship between father and son can blossom into a lifelong friendship. Nevertheless, the interaction between father and son is not exhausted by the idea of a relationship. There is something more here than a mere relationship. The relationship between father and son can suffer. The father and son may fight and argue, and ultimately stop talking to one another. The relationship can become so strained that it entirely ceases. The relationship can dissolve. However, even in this case, there is still a relation between the man and his son. The man does not cease to be a father, nor does the son cease to be a son, simply because the relationship comes to an end. The relation between father and son is a much deeper ontological reality than the relationship which is founded upon it.

Similarly, marriage is fundamentally a relation upon which a relationship can be built. The ontological relation of being a husband or being a wife comes to an end with death, and is similar to the relation of father/son. A relationship is founded upon this ontological relation. The relationship may come to an end, but the relation (aka, the bond of marriage) is indissoluble.

We are supported in our interpretation of marriage by the words of Jesus himself. The words of Jesus about the ontological structure of marriage are recorded in scripture: Mt 5:31-32; Mt 19:1-12; Mk 10:1-12; Lk 16:18; I Cor 7:10-11. Jesus says, “So they are no longer two, but one flesh. […] And I say to you, whoever divorces his wife […] and marries another commits adultery” (Mt 19:6; 9). In other words, divorce signifies that the relationship is dissolved, but it does not dissolve the relation.

A relation (e.g., husband) is not a job or function, like being a plumber. A relation is a way of being which is circumscribed by certain rights and obligations. This set of rights and obligations determine the nature of the relation. The rights and obligations of marriage include: the obligation to maintain cohabitation, the obligation of sharing the whole of life, the obligation of mutual fidelity, the obligation of exclusive interpersonal intimacy, the obligation to support and maintain
the conjugal relationship, the obligation to have conjugal acts suitable for procreation, the obligation to promote the overall well-being of the children and to educate the children, the obligation to promotion of the overall well-being of the other, and to provide suitable help to the other.

Marriage is much more than a means to personal happiness and fulfillment. Love between the spouses, good communication, etc., these pertain to the relationship of marriage, not to the relation itself. A marriage devoid of love, communication, etc., does not necessarily mean that a relation does not exist, only that the relationship is in trouble. The tendency of our culture to view marriage as a private dissoluble pact between two persons must be strongly resisted. Marriage is not a private good, but a public good.

St. Augustine identifies a threefold goodness to marriage. Marriage is good because it produces children, mutual fidelity and permanence or stability. Additionally, St. Isidore of Seville teaches that marriage also provides a remedy for concupiscence and provides the spouse with a helpmate. The canonical tradition has incorporated these teachings into an understanding of the essential nature of the relation of marriage, which includes two or three structural components (unity and indissolubility and sometimes sacramental dignity) and two intrinsic ends (children and the good of the spouses).

Unity: The relation of marriage only exists between two persons. This is the basis for both the monogamous aspect of marriage, as well as the demand of mutual fidelity. Because the relation is a unity, someone who is already married cannot marry another. Indissolubility: The ontological relation between husband and wife is indissoluble until death. Indissolubility pertains to all marriages, not just sacramental marriages. A natural marriage is any marriage contracted by at least one non-baptized party. A natural marriage is indissoluble by its very nature, regardless of whether the parties are Catholic, Protestant, Jewish, Muslim, atheist, etc. However, a natural marriage can be dissolved by the power of the Church. Sacramentality: The sacramental dignity of marriage pertains to any marriage contracted between two baptized parties. A sacramental marriage is absolutely indissoluble. A marriage in which one party is not validly baptized is a natural marriage, not a sacrament. However, as soon as the non-baptized person becomes baptized, the marriage between the two parties immediately and automatically becomes a sacramental marriage, by virtue of the baptism itself. There is no need to bless or convalidate a marriage to make it sacramental. A marriage is sacramental if both parties are baptized.

Every marriage is indissoluble by its very nature. However, there are degrees of indissolubility. The parties themselves are not able to dissolve a valid marriage, which is known as intrinsic indissolubility. Moreover, the state/secular powers are not able to dissolve a natural or sacramental marriage, which is known as relative extrinsic indissolubility. Whereas, only a sacramental marriage is incapable of being dissolved by the power of the Church, which is known as absolute extrinsic indissolubility. In other words, every natural marriage is capable of being dissolved by the Church, subject to certain conditions.

Children: Marriage is ordered to children. However, this does not mean that every marriage must produce children. Marriage does not have to produce children, but it must be ordered to children. To be ordered to children, the spouses must have the rights and free access to sexual acts apt for
procreation, without the use of contraception. *The good of the spouses*: Marriage is ordered to the flourishing and ultimate salvation of the spouses. Accordingly, the spouses are to be helpmates to each other throughout the daily tasks of life, and are to aid each other on the road to heaven. However, if a marriage turns unhappy it does not cease to be a marriage. Marriage does not have to produce happiness, but it must be ordered to the good of the spouses. The good of the spouses presupposes a fundamental dignity and equality among the spouses.

These structural components and essential ends of marriage pertain to the relation itself. It is impossible for a couple to try to redefine their own particular marriage to exclude one or more of these elements. For example, a relationship between a man and woman which includes an intimate sexual relationship, but excludes the possibility of children being born, is not marriage. However, every marriage which is contracted properly with respect to its external form is presumed to be a true marriage until declared otherwise by the Tribunal. This means that even if there is a suspicion of an invalid marriage, we must treat it like a valid marriage until an ecclesiastical tribunal declares the marriage to be invalid.

What kind of external form is required for marriage? Marriage itself does not require any specific form in which the parties must exchange their consent to be married. Protestants, Jews, Muslims, Hindus, etc. can marry in whatever external form is customary. The only requirement is that the consent to be married must be externally manifested in some way. Even though the nature of marriage itself does not require any specific form, the Catholic Church has determined that Catholics must follow the prescribed ‘canonical form’. The requirement to follow canonical form is unique to Catholics alone. Anyone who is baptized Catholic must follow canonical form, otherwise the marriage is invalid. In other words, a Catholic who runs off to Las Vegas to get married by Elvis, does not succeed in getting married.

A Catholic can only get married by exchanging consent to be married in the presence of a priest or deacon authorized to assist at the wedding. If this basic requirement is not fulfilled, then the result is not marriage.

Keeping these ideas in mind, we can solve a number of practical problems. Whenever someone is coming into the Church, we must assess their marital status. A divorced person is not prevented from entering the Church simply because of the divorce. However, without an ecclesiastical declaration of nullity, we presume that the first marriage was valid and that the person is still a husband or wife to the other spouse. Nevertheless, the person’s situation of being married but no longer living with the spouse does not bar entry into the Church.

A new attempted marriage after a divorce does pose some problems in terms of welcoming someone into the Church. In this case, the person is presumed to be married but no longer living with the spouse, while simultaneously living in a sexual relationship with someone who is not one’s spouse. Not only is this situation personally sinful, but it is also an affront to marriage itself. Such a person has a fundamental choice: forsake the current sexual relationship and enter the Church, or apply for a declaration of nullity so that the first marriage can (potentially) be declared invalid. A declaration of nullity would allow for the person to marry their partner, thus regularizing their sexual relationship, and then enter the Church as a married person.
Two non-baptized persons who are married and who wish to become baptized and enter the Church do not need any validation or blessing of their marriage. Their marriage is natural and will be raised to the dignity of a sacrament once they both become baptized. There is no need for ecclesiastical intervention. On the other hand, two married Protestants who wish to enter the Church are already in a sacramental marriage. Nothing is required to validate or bless their marriage.

A convalidation is only required of someone entering the Church who is objectively involved in an invalid marriage, and who wants their marriage to be valid. This would be the case for a Catholic who married in Las Vegas by Elvis, but who is now coming back to the Church and wants to receive the sacraments. Sometimes, before a convalidation is done there must be declaration of nullity of a prior marriage. This pertains anytime someone is presumed to be married to a first spouse but now involved in a second marriage.
The annual workshop for Continuing Education for Advocates was successfully concluded on October 14, 2017 with over 100 advocates in attendance. The focus of this year’s class was canon 1103, Force and Fear. In addition, we tried to address all the questions that were sent to us as well as a review of the grounds covered in our previous class and other topics. The complete presentation was recorded and is now on our website. The video as well as the slides are available for those who were not able to attend. Here is the link https://archden.org/tribunal/advocate-page/.
MEET OUR CANONIST

Mr. Carlos Venegas, JCL

Carlos Venegas, JCL, was born and raised in Southern California, the oldest of ten siblings. He attended St. Joseph Catholic School in La Puente, then Don Bosco Technical Institute in Rosemead, California through high school and earned an Associate of Science degree in Design Technology. He worked for a few years as a draftsman in the engineering department of a mechanical contractor, designing air conditioning systems for businesses and suite developments. At the same time, he played the saxophone with his band in the Los Angeles area, and dreamt of pursuing a career in the music business. After an almost fatal car accident at the age of 19, his life abruptly changed direction. While in recovery he attended a local liberal arts college, and began to more attentively consider the deeper questions of life.

A year later, he followed the calling of the Lord and entered religious life with the Legionaries of Christ, which was a life-altering experience and lasted about ten years, at the end of which he discerned that God was not calling him to the priesthood. During this time, he studied in Spain and Rome, met St. John Paul II several times, and
had the opportunity to visit and work in several different countries. He worked as the vice-principal of a school in Santiago, Chile and later served in the same capacity at another school in Mexico. This entire experience left its mark on him, for which he is eternally grateful.

Upon returning to Los Angeles he found employment with the Tribunal of the Archdiocese of Los Angeles in 1991 and returned to Rome with his wife Anita in 1997 to study canon law at the Angelicum, sponsored by the LA Archdiocese. After completing his JCL and returning to Los Angeles where he was appointed a Judge and began to serve as canonical consultant for various entities and persons, including EWTN. In 2002, he took his wife and daughter to Boise, Idaho where he worked in the local tribunal. In 2007, he was welcomed to the Archdiocese of Denver and after 26 years of tribunal experience, continues his ministry serving the People of God as a Judge and canonist.
“The welfare of the family is decisive for the future of the world and that of the Church.”

Pope Francis
Amoris Laetitia (The Joy of Love), 31