

## CONSILIUM 68

### Argument

A certain sexagenarian had taken a virgin to wife and although he tried to excite her passions for a month and more in vain, he was never able to make her a woman. When this situation was exposed, the father of the bride instituted proceedings for the dissolution of the marriage, and he expected no delay by reason of the fact that the groom was clearly incapable of consummating the marriage on account of his age, his ill health and a fistula in his perineum. However, the groom brought forward in opposition the *arctatio* [exceptional tightness or constriction of the female genitals. See Boccafola, Kenneth, The Requirement of Perpetuity for the Impediment of Impotence, Rome, 1975, p.51-52 .] of the virgin and also her aversion to himself, and for these reasons he pressed for an examination of the virgin by experienced matrons with regard to her *arctatio* and for a delay of three years because of her aversion; for as to her *arctatio*, the bride could have some removable impediment; and as to the aversion of her heart, this could in time be changed for the better.

### Summary

1. For the dissolution of a marriage where there is firm evidence of an impediment a waiting period of three years is not necessary.
2. Men of sixty and even older can copulate and generate. Explanation at number 7.
3. A man who is feeble by nature cannot be said to be an invalid.

4. Debility can exist within a natural state.
5. Although they may be feeble, old men are said to be heathy,.
6. Length of the member cannot impede erection, although it can impede generation.
7. See above.
8. Age is determined not by number of years but by vigour.
9. A man who is infirm is not presumed to be capable of coitus.
10. Those who are said to have disorders of the stomach.
11. Unnatural conformation of the genitals is numbered among the causes of an inability to copulate.
12. A fistula in the perineum increases the inability to copulate.

1.....I should have thought neither request of the husband to be justified, since an examination of the virgin does not appear to be necessary and a delay of three years years is useless, as evidence exists of an impediment on his part, and especially since all the arguments which he offers in his defence in public are easily refuted and seem completely without substance and ought to be restricted to the following points.

2. In the first place, as to his age, he says he is not so stricken in years that he ought to be judged incapable of carnal copulation because of this burden: for not only do old men of sixty easily engage in coitus, but also men of a much greater age, as is known; and it is established that old men past their sixtieth year not only copulate, but even procreate, according to the instances which I set out *Quaest. Medico. Leg. tit. 1 quest.5. num. 50. and following*; indeed also in *lib. 7. num.13 and following* I demonstrated that

the ability to copulate is extended to the seventieth year, and also that beyond all dispute it is taken for granted that some are impotent before this limit; therefore, nothing which could be detrimental to the integrity of the marriage can be alleged in respect to the age of the groom, although he is a sexagenarian.

**3.** In the second place, nothing is asserted in respect to his ill health which would bring about the dissolution of the marriage; for although the groom is not robust and does not have a strong constitution, yet he is not so feeble that it can be argued from this that he is incapable of coitus, and also, despite his feeble nature, yet he cannot rightly be called an invalid, because however the term of invalid is perceived, a feeble man cannot be called an invalid, **4.** and **5.** since in an invalid a certain preternatural condition is always permanently established, but this is not so in a feeble man, because debility can exist along with one's natural state, which cannot be asserted of the condition of an invalid, since men living in this state cannot be said to enjoy unimpaired health, and so they are in some measure in a state beyond nature; but the feeble certainly enjoy health, although they perform their functions weakly, and the same thing happens in their use of the senses, which even if they are so weak that no old man has power and vigour, as I have stated at length elsewhere, yet these old men are said to be healthy and to enjoy such good health as old age permits them to enjoy: *Galen. lib. 6. de sanit. tuend. cap. 2.*

**6.** Moreover, in the third place, as his genitals are well formed, any impediment in respect to these parts is excluded, for he has a member of appropriate size, since it is neither so small nor of such a large size that from either fault he should be judged less capable of having an erection and consummating the marriage: there also seems to be

no fault in respect to length, especially since length cannot hinder an erection, although it may be freely granted that it could impede generation, *Aristotle lib. 1. re Generat. Anim capt.* But if there is any truth in this, it is not true for everyone, but only perhaps for those who have an especially weak expulsion, for on the contrary, in those who have a strong expulsion, this is vainly asserted to be an impediment to generation, and certain animals endowed with a very long penis bear sufficient witness to this, since they are very fruitful on this account: but returning to the nature of his member, the groom was endowed with a member of natural colour and a praiseworthy appearance, and it does not appear flaccid and exhibits no impediment evident to the eyes. Moreover, he is in addition endowed with well disposed testes of a size which is not to be despised, and although they perhaps may appear more meagre than is usual, this does not prevent a man from having the power of copulation and generation. Nor does it appear that the fistula which he certainly suffers in his perineum can cause such an impediment, since it is not notable in nature and discharges little matter and that not in such a quantity that it could therefore be argued that the genital parts themselves are deprived of warmth and are rendered unfit for the exercise of coitus, especially since the matter itself is not of a serious nature since it is not foetid or malodorous, it causes no pain or impediment in making water, nor while it discharges does it affect the man adversely or render him sluggish.

Nor does an attempt made during menses, in which time the groom could not make the virgin a woman, prove an obstacle, since repugnance on the part of the bride who did not allow the man to perform his duty freely was the obstacle; for she barely permitted herself to be touched by him and having once turned away she always turned

her back on him; indeed she scarcely allowed her husband to insert the tip of his penis into her uterus before she straight way leapt back, turned away the man, and held him in such hatred that he did not dare deny her, for when questioned by her parent and ordered to speak truthfully of the matter, she confessed this; and as I say, both her father and her mother could not deny her statement.

Thus taking into account all these circumstances, it seems there certainly ought to a three year delay before the marriage is dissolved, and in the meantime the virgin should be examined by experienced matrons as to whether she has any impediment as a result of which she is not able to receive her husband, and so that it may be removed if it is removable; moreover, it is certain to be present, since there is no impediment present on the part of the husband, as seems to have been shown more than satisfactorily by what has been said above.

However, none of these things which the groom referred to on his own behalf can have any influence, so that it must be determined whether the petition of the other side is just or his own request, since the impediment, indeed all the impediments to the consummation of the marriage are on the part of the groom, and moreover, evidence exists that requires no examination and also no delay, and they ought not delay the dissolution of the marriage by any means.

7. And so in the first place, as to age, although we should not deny that not only men in their sixties but men in their seventies and even older are not only fit for the act of love but also of generation, yet this is to be understood of robust old men who cannot be called old because of the number of their years, since they have their vigour intact and their strength is in no way diminished by their many years. But just as robust old

men of this kind cannot be said to be old, since their many years are no hindrance, so on the contrary, notwithstanding a much lesser number of years, those who are naturally feeble ought to be called prematurely old even in their fiftieth year and they should be judged incapable of youthful acts or vigorous acts or even the deeds of old age which are appropriate for robust old men, since age is determined not by number of years but by vigour: *Galen. lib. 6 de sanit. tuen. cap. 1.*

**8.** When, therefore, vigour is constant and strong, old age is put off to the seventieth year and beyond, when vigour is weak to the fiftieth year rather than later, and indeed sometimes it begins at an earlier date, and thus, even in the time of youth itself, namely that in which for the most part men are found endowed with vigour of youthful age, indeed also in that in which they are called adolescent, someone can be old and even infirm according to Hippocrates, Aristotle and Galen, as I said elsewhere *lib. 1. har. quae. Tit. 1 quaest.. 7. n. 34 and following.* Since, therefore, this man was always naturally weak, to an extent that neither he nor those who are speaking in his favour dare deny, even that he is older than sixty, not only should he be called an old man, but an old man so feeble he must be presumed to be incapable of the act of love; thus the extent of this man's inability to copulate on account of his age is obvious and is without remedy, since excess frigidity, on account of which he is rendered unfit for coitus, not only cannot be remedied but it inevitably gets worse every day.

**9.** Further to his health, even if it is freely conceded that this man is not an invalid in respect to his vigour, but only has a weak nature, yet this very feebleness of old age with its natural decrepitude is a very potent cause of an inability to copulate, and given that he was able to copulate at an earlier age (which has not been conclusively and

sufficiently proven), with an increasing number of years and old age approaching he remains absolutely incapable of coitus, especially with a virgin.

**10.** For certainly this man can by no means be in good health, indeed he must be numbered among the invalids, since throughout the whole course of his life he has been tormented with chronic illnesses and he has always had a poor colour, just as one who suffers from a weakness of the stomach and perpetual anxiety, whence rightly he has come to be considered among those with digestive disorders, since he has always had a poor appetite and always had a poor digestion, emitting frequent belches while digesting food with difficulty and anxiety, and he suffers from constant bad breath and is constantly plagued by other symptoms, and Galen teaches that men are said to be prone to stomach disorders on account of symptoms such as these, *libro octavo de Comp. med. secund. loc. capite secundo*. And yet some have said that those with stomach disorders are not invalids; on the contrary, not only should they be called invalids but chronically diseased, since they are not healthy in any way. And, as can be seen, natural weakness and coldness of the stomach are acknowledged by all practitioners as the most potent cause of the inability to copulate. Thus when so clear a cause of impotence is present in this man, any search for another cause of the impediment to his consummating the marriage is completely futile.

**11.** For this reason any delay or procrastination in declaring the marriage null will also be unproductive, since not only is the cause of the impediment to the consummation of the marriage evident, but it is irremediable, since the more the groom advances in age, which is already very cold, of necessity the more the excessive weakness of his stomach is increased and extended.

Furthermore, as pertains to the conformation of his parts, namely of his genitals, it is clear that they contribute to causing his impotence in coitus on account of their ill-suited and inappropriate form; for his rod is unusually long and slender, so that with the existing lack of animation, which is evident in a subject of this kind, it is not able to be aroused sufficiently; apart from the fact that in his report the surgeon notes that it is of a flaccid substance, and because of the aforementioned length and flaccidity he believes it cannot be aroused and acquire such great hardness as it swells up that he would to be able to deflower his virgin bride and make her a woman; this demonstrates the manifest falseness of all the augments which the groom, his supporters, and those writing on his behalf are presenting in his defence; on the contrary, what he says in his own favour is not only doubtful but completely without truth; certainly the assertions brought forward against him are true and evident; they clearly demonstrate that the impediment to copulation is on his side, and this impediment is such that it is not necessary to wait any length of time for a declaration as to whether or not such an impediment is sufficient for the dissolution of the marriage: furthermore, it is clear that that the impediment cannot be reversed, on the contrary, even if anyone tries, by nature it is not removable, rather in a subject of this kind, in whom frigidity certainly increases each day, I should rather say each moment, the impediment is insuperable, since the innate heat which is beneficial in removing a great impediment of this kind with natural assistance is lacking

**12.** For that reason, a fistula in the perineum such as this man suffers is worthy of serious consideration, since however small it may be, yet by in a very great measure depriving the genital parts of warmth, it increases the impediment to copulation to an

astonishing extent; and yet his fistula is not small, but even larger than usual, and it has already troubled this man for very many years, since it has been left untouched on account of repeated openings of an abscess in the perineum itself, and this is of a nature which can have a very serious effect, since from it there constantly flows a considerable discharge of a disgusting odour and colour: the statement of the surgeon deputed to report on this matter attests all this to be true, contrary to what the groom has falsely stated concerning this fistula, along with anyone who looks with favour on his case.

Since, therefore, the sole cause of the impotence of this man is clear and irreparable, it is useless for him to desire that other causes on the part of the bride be investigated, since even if any such cause on the part of the bride were shown, the cause on the part of the groom is so evident that in itself it ought to be considered sufficient for the dissolution of the marriage with no waiting period of three years, and no other cause on the part the part of the bride need be sought, even if we suspect there is one present, although this suspicion is absolutely empty and far fetched and has no real foundation.

Finally, all the arguments which the groom brought forward on his own behalf in respect to the repugnance of his bride, who refused to allow him to enter her, and indeed on the contrary did not even allow the groom to approach her, ought to be considered false and are declared most false on account of the groom, of whom the bride at her mother's home bitterly complained, not without blushing, that when he saw he could not deflower his bride on account of the flaccidity of his own member, he kept trying with hand and fingers to break her virginal barrier, and thus happened, although in

the first days of the marriage and during several subsequent days, the bride allowed herself to be aroused in vain by her husband, after she realized that he was continuing so wickedly to try to break the virginal seal with his fingers, she thereafter refused, and rightly, to be touched by him in any way.

Therefore, it must be judged that this man has provided enough and more than enough evidence of his own impotence, and that this evidence is sufficient to declare the marriage invalid on the grounds of inability to consummate the marriage, with no delay, especially not a delay of three years, and that it is absolutely useless and unnecessary to look for any impediment in the bride while so many very strong impediments are obvious on the part of the husband.