

Consilium 72

Regarding the Title Concerning Impotence in Coitus and Procreation

Translated by Patricia Coyne

Argument

In Paris, on the Bridge of the Moneychangers, a goldsmith had taken a virtuous young woman as his wife. Although he had engaged in intercourse with her several times, he had not been able to have sexual union freely, since she could not admit him without severe anguish and pain. Therefore, since the husband, thus impeded, was not able to complete his matrimonial duty, he threatened to dissolve the marriage, despite the fact that his wife asserted that she was pregnant. Therefore, certain very skilled surgeons were summoned to examine her and to report the nature of the impediment; they found that a thick, tough membrane was closing the mouth of the uterus, although it was permeable by means of small openings. Therefore, once the above mentioned membrane had been cut, taking diligent care, the husband, afterwards had freer access to sexual congress and never again mentioned dissolving the marriage. Six months after the surgical removal of the membrane, the wife gave birth to a healthy and fully developed little boy. This case history is discussed in the writings of the learned

surgeon Guillelmus Fabritus, *Observat. Chiurg. Cent. 3. Observat. 60. exempl. 2.*, which I also mentioned *in supplem. ad libr. 3. titul. 1. quaest. 1*, and on this occasion I will publicly set out some questions which can be put forward as worthy of discussion and I will try my best to resolve these questions.

Summary [2, 6, 8 are missing]

1. The dissolution of a marriage cannot be proposed unless it is agreed that the impediment to the consummation of the marriage is not removable. See the following number and number 7.
3. Once the impediment is known, even if the husband continues to have sexual intercourse on a number of occasions, although the impediment has not been removed, he can seek dissolution of the marriage.
4. Both spouses are presumed to be inherently healthy, unless it may be proven otherwise, and so also are presumed fit for coitus.
5. When an impediment exists such that the husband cannot penetrate the uterus, the marriage is not considered to be consummated even though semen has been ejaculated. See also the following number.

7. In respect to the validity of a marriage, in order for the marriage to be able to be declared consummated, the potential to penetrate the female uterus is required.

9. Whenever spouses are able to attain the purpose of marriage. the marriage is said to be valid and consummated.

10. The procreation of children is the purpose of marriage..

11. To what extent the penetration of the female vessel is necessary for the marriage to be declared consummated.

12. A marriage is not said to be consummated only by the penetration of the uterus, but also by the outpouring of semen within the uterus.

13. The validity of a marriage cannot depend on an isolated occurrence.

15. Conception sometimes follows without insertion and without penetration of the uterus, but from only an effusion of semen near the mouth of the uterus.

Contrary view, see the following numbers.

16. Whether the husband can seek the dissolution of a marriage when an impediment is not removed and yet conception follows from insemination.

17. Whether, when an impediment is not removed and conception follows and the wife is delivered by Caesarean section and survives, the husband can seek the dissolution the marriage.

Several questions may arise from the case reported above and questions of no little importance; of these questions I will put forward only those with solutions in keeping with my profession as a doctor; if other questions arise from this matter pertaining to Canon Law, I will not touch on them. Therefore, the following questions may be asked:

First, whether the aforementioned goldsmith, noticing during sexual congress with his wife that there was an impediment present in her uterus preventing him from penetration of her womb and withdrawing from further congress before he had emitted semen, would rightly be able to insist on a judgement concerning the invalidity of the marriage.

Second, whether in not abstaining from further coitus after recognition of an impediment and in emitting semen which had not been received in the female uterus, his insistence in regard to the dissolution of the marriage would have been just.

Third, whether if conception followed this kind of sexual congress, as it did in our case, the husband could nevertheless insist on the same judgement. Fourth and finally, as a corollary, it might be asked if conception followed and yet the impediment was not removed, and if the woman, who was ready to give birth and yet unable to give birth, underwent a Caesarean section and was safe after the

foetus had been removed, the husband could insist on the invalidity of the marriage.

1 and 2. Therefore, as to the first question, the matter is clear: for to dissolve a marriage it is not enough to allege an impediment preventing consummation, but it is necessary to prove that such an impediment exists which is not removable by any means: for no impediment, however great, can give cause for the dissolution of a marriage when it can be removed or is not permanent but temporary, as is recognized by experts in Canon law: Sanchez *de matrim. lib.7. disp. 92. num 3.*, *Rota in Pampilonens. Matrim. 1622, Coccinus presiding*. [Roman Rota tribunal, highest court of the Catholic Church]

3. Concerning this argument, however, it should be noted that an impediment of this kind can either be easily removable or removable with great difficulty, or be removable without any danger, or, on the contrary, only with great and evident difficulty: for in the first case a conclusion concerning the indissolubility of the marriage has a place, in the second not at all, as I cited elsewhere from Joan.

Andrea de spons. & matrim. n. 16, Rota in Pampilonens. Matrim. 13. May. 1622. num.1, Coccinus presiding, as cited above.

4.- 6. As to the second question, it seems at first glance not to be just and fair, as the husband insists on the dissolution of the marriage even though, after he

recognized the impediment, he did not withdraw from coitus but continued to copulate not once or twice but many times and with effusion of semen too; but although he recognized the impediment, he was convinced in good faith that he could overcome it by continuing to copulate: nor was this a vain belief since both parties are presumed to be healthy by nature, unless it is proved otherwise. *Rota apud Farinac. decis. 715. num. 2. part. 1. tom. 2.* Thus the fitness of each party for coitus is presumed: *Alciat. de Presumpt. reg. 1, Praesumpt. 41. numero primo, Rota in Bononiens. fidei comm. de Buccaserreis 14 May, 1655, R.P.D. Zurate presiding.*

This presumption of fitness is even greater for women than for men because women become incapable of coitus very rarely and for fewer reasons than men: for in women this happens only on account of some membrane which is unusual, or because the hymen itself is too tough and closes off the female parts, as is agreed by all (although I have noted other impediments in their own place.)

Therefore, it happens that, although this impediment cannot be removed in either the first, second, or subsequent attempts at sexual congress because of the toughness of the above mentioned membrane or the hymen, yet sometimes it is completely removed by continued coitus, and thus, therefore, the fact that a man is not able to have intercourse with his wife in a single exchange is not sufficient to render a marriage invalid. *Rota in Pisarens. Jocalium 22. June, 1643, Arguelles*

presiding, vers. Nec se excusare potest. But a suitable time must be awaited, as on that occasion, because the truth must be confirmed by evidence, just as much as if there were an impediment on the part of the husband as on the part of the wife. If, therefore, as Thomas Sanchez allows, *lib. 7. de Matrim. disput. 99. sub num. 37*, even when semen has been emitted through coitus of this kind and been attracted by the uterus, the marriage is not said to be consummated, but is rendered invalid, as discussed more extensively below, it must be affirmed much more certainly that the marriage is void and not consummated when semen is emitted only and has not in any way been attracted by the uterus. If, therefore, the marriage has not been consummated in this way, and there is an impediment effectively preventing consummation, by law the husband can urge its invalidity.

7. But it is not everywhere accepted whether when a man emits semen without penetration of the uterus because of a recognized impediment, the marriage is thus invalid and that it ought to be broken off, and in our case nothing can be determined for certain because a determination of this kind depends on the possibility or impossibility of the removal of the impediment mentioned previously, and so the goldsmith can by no means press for the dissolution of the marriage before it can be discovered whether the impediment preventing penetration is removable or not.

8. Much more difficult is a resolution of the third question, and it can be objected on behalf of the goldsmith that notwithstanding the reported copulation, not only with semen emitted, received and accepted by the woman's uterus, but even with conception having followed, nevertheless, the marriage could not be said to be consummated, because for the marriage to be valid and be said to be consummated, the ability to inseminate is not sufficient, but requires at the same time the ability to penetrate the uterus: Sanchez *de Matrim. lib. 7. disp. 92. n. 9.* Therefore, when the ability to penetrate the uterus is lacking, the marriage cannot be valid because it has not been consummated. Since, therefore, the goldsmith was prevented from penetrating the uterus, in law he was able to insist on the invalidity of the marriage, notwithstanding the fact that the woman had conceived.

9-10. But to the contrary, whenever spouses are able to attain the preeminent purpose of matrimony, the marriage is seen to be valid and consummated, and indeed the goldsmith did attain the particular end of matrimony, which is the procreation of children, Rota in the previously cited *Pisaur. Jocalium, Arguelles presding, vers. 15 chiefly, and also vers. praeterquam quod* [excepting which]. Therefore, this marriage is valid and it is contrary to all justice to urge its invalidity.

11-12. Moreover, the opposing view that the marriage is not valid because the husband did not penetrate the uterus of the woman is easily dismissed on the grounds that the penetration of the uterus is necessary in so far as it is appointed for a higher purpose and is intended to achieve an appropriate emission of semen into the uterus so that the uterus easily attracts and receives the semen from which conception, which is the true and first purpose of matrimony, follows: therefore, if this purpose can be considered to be attained even without penetration the uterus, what reason is there but that the marriage ought to be declared valid and consummated? Yet it is certain that spouses bound in marriage ought to be one flesh, which is the essence of marriage, not through penetration, but by the mingling of semen poured out by both spouses: Sanchez *lib. 1. de Matrim. disp. 21. n. 90. lib 7. disp .92. n. 7.*; whenever, therefore, it is found that the wife has an impediment which prevents penetration by the male member, such as a membrane blocking the passages of the uterus, a membrane which is passable by one or more openings through which the uterus can attract male semen so that it mingles with its own and from which conception may follow (which we know has occurred), it seems that the marriage has been consummated, since a marriage is consummated not through the penetration of the uterus, but by the reception of the male semen accomplished by the uterus.

13. Nor does what Sanchez said, *eod* [in the same]. *lib. 7. dis. 99. sub n. 37*, argue the contrary, namely that the validity of marriage cannot depend on a rare and accidental occurrence, and thus a marriage cannot be declared valid even if the semen was attracted by the uterus despite an irremovable impediment preventing the husband from penetrating the uterus, because, although for women to have such an impediment may be something infrequent, it is not extraordinary, but happens naturally, as with the existence of a membrane causing an impediment which is made passable by openings through which the male semen may be attracted: thus in this case it seems it ought not to be declared so freely that even from coitus with the reception of male semen within the uterus a marriage ought to be pronounced empty and invalid, as through the reception of semen those joined in the marriage become one flesh and the principal purpose of matrimony is attained by such copulation.

14-15. Nor can an opposing argument, which follows, withstand scrutiny, namely that, if a marriage ought to be said to have been consummated solely by the reception of male semen within the uterus, it follows that not only is a virgin said to have been deflowered, but the marriage is said to have been consummated only from an effusion of male semen close to the mouth of the uterus, given that it is attracted by the uterus, as some say can occur, and as they affirm sometimes

happens without any insertion and penetration by the male member; however, it does not appear that this view should be maintained; for in response it is argued that the attraction of male semen by the uterus cannot occur unless the male member has penetrated so far in its emission that the uterus has semen close to itself, even if something has been placed in between, as in our case, and also the semen cannot in anyway be altered by external air, which causes the extremely tenuous spirits of the male semen itself to dissipate and vanish in a moment, more quickly than the spoken word, whence it is false and believed by old women that conception would ever have resulted from an effusion of semen near the mouth the uterus, as I proved *lib. 3. tit. 1 q. 6. n.50* and following.

16. But in any case this ought to be certain, as has been said before elsewhere, that the goldsmith could not lawfully have sought to have his marriage declared invalid unless it was agreed during the required time for this request that the impediment was permanent and irremovable. This could be established with certainty on two accounts through an examination made by surgeons, as was done in the present case, who would declare, once they ascertained the nature of the impediment, that it was not removable, or if it was removable that they would remove it, as they accomplished in the case of this woman, or that this removal could happen at the expected time of giving birth, for at the time of birth

either the impediment disappears once the membrane closing off the entrance to the uterus is broken, or the woman dies from childbirth, as we have said elsewhere on the authority of Hippocrates, although in our time, through Caesarian section, a number of women have been saved from death since the foetus, which they were not able to deliver because of the impediment which has been described, was removed by this surgery, as it is agreed by many histories including Francise. *Roussetus in lib. ac Part. Caesar.* and others.

17. Finally, in respect to the last question, it does not seem that a husband can be prevented from pressing for the dissolution of a marriage, because even after a woman undergoes a Caesarian section and recovers her health, her husband does not have free access to coitus because the obstacle of the membrane which prevented access by the male member was not removed by the surgery, and in marital intercourse it is necessary that he have free access to sexual intercourse so that he can freely penetrate the uterus, otherwise he is considered to be deprived of the second purpose of marriage, which is to be a remedy for lust: Sanchez *de Matrimon.* lib. 2. disput. 29. num.14, since he is not able freely to have marital intercourse; therefore, it seems he can lawfully seek the dissolution of the marriage.

But in this case, the demand of the husband does not seem just, because, even if he does not have completely free access to sexual congress, nonetheless, he does have partial access since he not only produces semen, he also begets offspring through this insemination. This seems sufficient for the purpose in that he is able to consummate the marriage and later to have marital intercourse and to become one flesh and procreate children. And the additional argument that coitus of this kind, in which the husband cannot penetrate the uterus freely, cannot be a remedy for lust, is clearly shown as false, since a cure for lust is considered to be achieved by the emission of semen through lawful carnal intercourse; therefore, provided a husband is not prevented from emitting semen whenever he has intercourse with his wife, without any doubt he has a sufficient remedy for lust.

For the rest, to satisfactorily answer the questions mentioned earlier, I have only brought forward here those arguments which seemed to pertain to me as a doctor, since I understand very well that I can establish or determine nothing beyond this, and what questions yet remain must be referred to practitioners of Canon law, to whom I declare that I have done nothing unbecoming, since I produce for examination cases of this kind which are not unusual occurrences, because they are not found among even slightly unusual cases.