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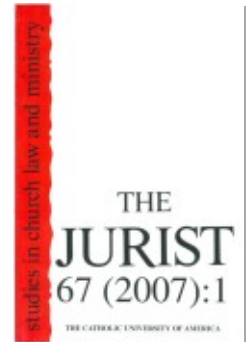
## Some Recent Rotal Jurisprudence on *Bonum Coniugum*

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The Jurist: Studies in Church Law and Ministry, Volume 67, Number 1,  
2007, pp. 245-263 (Article)

Published by The Catholic University of America Press

DOI: <https://doi.org/10.1353/jur.2007.0032>



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## SOME RECENT ROTAL JURISPRUDENCE ON *BONUM CONIUGUM*<sup>†</sup>

WILLIAM A. VARVARO\*

Several years ago the author gave two presentations at the Canon Law Society of America meetings about recent developments in Rotal jurisprudence. One of the items mentioned was his interest in the further developments on the *bonum coniugum* jurisprudence. At that time Msgr. Cormac Burke had begun to speak about this issue in his decisions. The author had been fascinated with this topic ever since the Code of Canon Law had been issued in 1983 and this terminology found its way into our legislation (c. 1055).

While Monsignor Burke was writing about “conjuality” in the 1983 Code of Canon Law, he found the clearest affirmation of conjuality in the words used by the spouses themselves in exchanging their consent. By saying “I give myself to you” there is an intention to give the conjugal self to the other; and this must be done in its entirety. At the time, some twelve years ago, the author was hoping to be able to read more about the notion of conjuality and further developments. There has been some development on this point which he hopes to share with you in this paper.<sup>1</sup>

In 2002 Augustine Mendonça wrote an article in *The Jurist* pointing out how it has taken about twenty years for this notion of *bonum coniugum* to enter into the juridical thinking of the Rotal judges.<sup>2</sup> But its presence in present day jurisprudence is unmistakable as we will see.

The author is privileged to know on a personal basis the Most Reverend Kenneth E. Boccafola, one of the most senior judges of the Roman Rota; and we have had occasion recently to discuss this aspect of matrimonial jurisprudence.<sup>3</sup> The purpose of this article is to present some of Boccafola’s recent thinking on this topic as evident in some of his deci-

<sup>†</sup> Editor’s note: this article was originally presented at the May 2005 conference of the Canon Law Society of Great Britain and Ireland.

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<sup>1</sup> *CLSA Proceedings* 55 (1993) 161.

<sup>2</sup> Augustine Mendonça, “Recent Developments in Rotal Jurisprudence on Exclusion of the *Bonum Coniugum*,” *The Jurist* 62 (2002) 378–420.

<sup>3</sup> Editor’s note: On October 8–9, 2006 Msgr. Boccafola and Msgr. Varvaro presented a pre-convention workshop on the *bonum coniugum* and other jurisprudential issues at the annual convention of the Canon Law Society of America in Fort Worth, Texas.

sions. The author also hopes to present some other jurisprudential information that can be gathered from Boccafola's recent writings.

A. Coram Boccafola, March 12, 1998.

In this decision he speaks of the *bonum coniugum* as a fourth good as noted by some in addition to the famous *bonum prolis*, *bonum fidei* and *bonum sacramenti* of Augustinian tradition. The specific mention of the *bonum coniugum* in the code<sup>4</sup> gives us ample reason to investigate the significance of this term and the reason for its inclusion.

More and more we appreciate that our Code of Canon Law clearly enunciates the personalistic view of marriage and marital commitment. And so, we can safely say that interpersonal communication is not limited to sex itself but presupposes a capacity to love and to gift oneself by which several personal goods are shared so that the good of the spouses is effectively attained.<sup>5</sup>

The good of the spouses is impeded whenever we find a radical incapacity present making it impossible or extremely difficult to assume and fulfill conjugal obligations.

Some of the concrete ways such an inability becomes manifest is a serious lack in ability to communicate, an inability to share and enjoy a sexual relationship, an inability to hold gainful employment, a reluctance to foster the domestic society involving husbands and wives.<sup>6</sup>

B. Coram Boccafola, October 14, 1999.

In this more recent decision Boccafola affirms the juridic nature of the *bonum coniugum*.<sup>7</sup> Here he refers back to the code revision meetings as reported in *Communicationes*. At that time the code commission clearly saw a juridic element in the *bonum coniugum*: "the ordination of marriage to the good of the spouses is truly an essential element of the marriage covenant."<sup>8</sup> This is an important understanding that requires further substantial development in our own jurisprudence today.

There should not be any doubt among canonists today that the marriage covenant looks to the *consortium totius vitae* as an essential aspect

<sup>4</sup> Canon 1055; see also Eastern code, cc. 1101, 2 and 824, 2.

<sup>5</sup> Coram Boccafola, March 12, 1998, in *Rotae Romanae Tribunalis Decisiones* 90 (1998) 218.

<sup>6</sup> Ibid.

<sup>7</sup> Coram Boccafola, October 14, 1999 (unpublished, No. 17.213)

<sup>8</sup> *Communicationes* 15 (1983) 221: "Ordinatio enim matrimonii ad bonum coniugum revera est elementum essenziale foederis matrimonialis."

of the matrimonial reality; and that the good of the spouses is seen as an essential element of matrimonial consent. Unfortunately we know there still are some ecclesiastical judges who are hesitant to consider the good of the spouses in this juridic way.

We must admit the important work of Monsignor Cormac Burke in opening up this door of opportunity in some of his Rotal decisions. Although our Code of Canon Law spoke of the *bonum coniugum* in 1983, it was not until 2000 that we come upon two Rotal decisions judged on the precise ground of the exclusion of the good of the spouses.<sup>9</sup>

Coram Pinto, June 9, 2000 (No. 17.799)

This sentence is the first occurrence since the present code was promulgated to attempt to deal with issues of the *bonum coniugum*.<sup>10</sup> In this case we see that the behavior of the female respondent before and after the wedding was able to generate moral certitude in the judges that there truly was an exclusion of the *bonum coniugum*.

In the Pinto case we come across two Catholic Brazilians. She was a teacher and from the very beginning she did not wish to consummate the marriage. She left their common home on March 8, 1974 only four months after the marriage. Although the original petition sought the nullity on the ground of an intention excluding the indissolubility of marriage (a partial simulation), the *ex officio* formula of the doubt also included "exclusion of the good of the spouses in accord with the norm of can. 1101, 2 on the part of the respondent."<sup>11</sup>

While the first instance court gave a negative decision on both grounds, the appellate tribunal made a complete reversal giving an affirmative to both doubts, and so the case came to the attention of the Rota in the ordinary course of justice.

Even though this marriage was celebrated before 1983, Pinto explains that issues of simulation are governed by the natural law and are therefore applicable in every case where simulation is alleged.<sup>12</sup>

<sup>9</sup> See Mendonça, 380, who mentions two cases decided June 9, 2000 *coram* Pinto and November 8, 2000 *coram* Civili.

<sup>10</sup> For an English translation of this sentence, see *Studia Canonica* 39 (2005) 271–288.

<sup>11</sup> Mendonça, 383.

<sup>12</sup> "... we are dealing with the defect of consent, which impedes, by the law of nature itself, those who marry from being able to give and receive each other in order to constitute that intimate communion of life and conjugal love established by God and endowed by him with its own laws." Mendonça, 384.

Pinto also points out that in the world today young people are greatly influenced by tendencies which deny the true Christian understanding of marriage. This is so rampant that many young people can fall into intransigent error (*error pervicax*). And worse still it is this kind of error that can create, by its presence and acceptance, a presumption in favor of the exclusion of an essential property of marriage by the parties to the marriage.<sup>13</sup>

This notion of intransigent error had been developed in the Rota many years before, for example *coram* Felici of July 13, 1954 and again on December 17, 1957. Such a pervasive error invalidates the marriage not on its own account but because the will of the person has been corrupted and vitiated by the error itself.<sup>14</sup> The Rota seems to admit here the possibility of two wills coexisting in the same person choosing to marry, and one of these actions will vitiate the consent given.

Pinto speaks at considerable length about implicit simulation which allows the positive act of exclusion to be deduced from the actions or circumstances and lifestyle of the person alleged to have simulated the marriage consent.

He says “. . . an intention that is at least virtual, of excluding marriage itself or one of the properties or an essential element of marriage, rooted in the habitual behavior of the one excluding or in the combination of circumstances of life of the same person . . . in the implicit act, it is extracted from the circumstances and the way of life of the contractant, since it is in some way hidden in them, and nevertheless efficacious.”<sup>15</sup>

These Felici sentences therefore lay the important foundation for subsequent thinking on the exclusion of the *bonum coniugum* taken up by other Rotal judges some fifty years later.

Pinto does not speak directly of the *bonum coniugum* alone, but remarks on it along with the exclusion of other *bona*. So we do not derive any constitutive elements of the *bonum coniugum* in a particular way. He says that the essential property of indissolubility and the good of the spouses can be excluded together by a person who enters marriage with the intention of excluding the giving of self in a total and exclusive way

<sup>13</sup> Mendonça, 387.

<sup>14</sup> Ibid., 388.

<sup>15</sup> *Coram* Pinto, June 9, 2000, n. 9 in Mendonça, 392. “In his praesertim casibus adiuncta et adminicula praecipuum possunt constituere argumentum pro matrimonii nullitate declaranda et aliquando etiam concludens (cf. can. 1679), licet non autonomum.”

and thus "gravely offending the dignity of the human person of the partner, thus impeding the interpersonal complementarity essential to marriage."<sup>16</sup>

Pinto is clearly affirming that the *bonum coniugum* must take cognizance of the dignity of the human person. A violation of the dignity of the human person therefore has juridic value. It must be included as an essential element of the *bonum coniugum* in every marital consent. The *bonum coniugum* also seeks that "interpersonal complementarity" that is the full expression of the biblical idea of "becoming one flesh" in mind and in body. It remains a question as to how far the two personalities of the spouses can be blended into one, but an attempt to do so cannot be excluded.

Pinto makes the argument that in a partial simulation a person can exclude not only an essential property of marriage e.g., perpetuity in the case at hand, but also some essential element, which he calls the good of the spouses.<sup>17</sup>

The court then attempted to prove that the deformed and perverse will of the respondent, Theresa, was in reality opposed to the indissolubility of the bond of marriage and also to the good of the spouses. There was no confession to be had. The proof of nullity came rather from an examination of her way of life. The petitioner spoke of an aloofness that became evident within the first six months of marriage along with a lack of reciprocity to the kisses and embraces he offered Theresa. The reason for this emotional distance was found to be in the fact that Theresa was deeply in love with another man, and therefore she found it impossible to have any intimacy with her husband, Roland.

Another circumstance noted by the judge was that she arrived two hours late for the wedding ceremony. She failed to demonstrate much joy on her wedding day. In effect, she treated her husband as an outsider to their conjugal relationship; and she took steps which brought about the termination of their common living together.

<sup>16</sup> "Admittere compellimus indissolubilitatis proprietatem atque bonum coniugum una simul excludi posse ab eo, qui in ineundis nuptiis, ob defectum sani coniugalis vel sponsalicii amoris, plenam et exclusivam suiipsius donationem excludit, sacramentum detrectans atque graviter offendens dignitatem personae humanae compartis, interpersonaliter impediens complementum coniugio essenziale. See Mendonça, 393.

<sup>17</sup> "In supra assertis sistit praecise ratio cur ad modum unius, in casu, possit nullitas probari ex duobus capitibus, nempe bonis sacramenti et coniugum" (n. 12). Mendonça, 396.

Pinto takes pains to establish the probative value of the *indicia* favoring simulation that are presented in the testimonies of this case. He refers to a sentence of Ewers (November 28, 1964) where even the testimony of one witness is not to be dismissed especially when it finds corroboration in other factors and the truthfulness of the witness is not considered questionable by the tribunal.

And so the Rota decides in the affirmative, probably for the first time, and pronounces on the exclusion of the indissolubility of marriage and the good of the spouses on the part of the respondent.

C. Coram Civili, November 8, 2000.

This sentence<sup>18</sup> provides us with the unequivocal statement that marriage looks to the good of the spouses as an essential element of the marriage covenant. It teaches that the *bonum coniugum* must comprise the recognition of the fundamental dignity of each spouse and must take into account physical, emotional, spiritual, moral, and social aspects. And so, the fundamental dignity of each individual spouse in marriage must be included in the object of matrimonial consent. The turnus was able to support an affirmative decision on the ground of the exclusion of the *bonum coniugum*.

This marriage took place in Slovakia on August 23, 1969. Peter was abusive of his wife and within six months the couple separated. Ludmilla tried her best to save the marriage but a definitive separation occurred on September 10, 1970, merely after one year together.

The woman petitioned for nullity on January 15, 1983 and received a negative decision on July 3, 1984. A second instance tribunal "confirmed" this negative sentence on February 21, 1985. [How can a negative sentence be confirmed?] She appealed to another tribunal (we don't know where); and this tribunal declared the two previous sentences invalid on procedural grounds and ordered the case to be heard again from the beginning. Now the first instance court gave an affirmative on April 10, 1989 on the ground of defect of consent in the man "precisely because of the exclusion of the good of the spouses." But this sentence was overturned on March 25, 1990. For some reason Ludmilla was never informed of this situation; and so it was not until December 10, 1994 that she was able to lodge an appeal at the Rota.

The doubt formulated at the Rota was specifically "Whether there is proof of invalidity of the marriage in the case as a result of a defect of

<sup>18</sup> For an English translation of this sentence, see *Studia Canonica* 39 (2005) 309–330.

matrimonial consent due to exclusion of the good of the spouses on the man's part."<sup>19</sup>

Civili attempts to show that the notion of *bonum coniugum* is not something strikingly new that comes to us out of Vatican II thinking, but he finds its roots in canonical thinking that precedes even the 1917 code. He latches on to an analysis of the expression *mutuum adiutorium* which was found in canon 1013, §2 of the 1917 code but which did not enjoy much juridical attention. This notion derives from the biblical story of Genesis (2:20) where God creates Eve as a suitable helpmate for Adam. Civili says it is therefore most proper for the woman to help the man, and it is likewise proper for the man to help the woman. And so he sees a "complementarity and an integration of the human being is all of his/her dimensions and levels."<sup>20</sup>

Civili claims that Pope Pius XI supported this view in his encyclical *Casti connubii*: "this determined effort to perfect each other . . . can also be said to be the primary reason and purpose of marriage, provided that marriage [is understood] in a wider sense as a communion, a relationship, an association of the whole of life."<sup>21</sup> Does this not remind us of vocabulary found in our 1983 code?

Civili also finds support in the decree *Gaudium et spes* of the Second Vatican Council (n. 48): "the man and the woman, who by virtue of their conjugal covenant 'are no longer two but one' (Mt. 19:6), offer help and service to each other through the intimate union of their persons and works. . . Fulfilling their conjugal and family tasks . . . they further their own perfection and their mutual sanctification."<sup>22</sup>

Civili also tells us that the Pontifical Commission for the Revision of the Code of Canon Law clearly supported the retention of the phrase: "The expression 'for the good of the spouses' should, therefore, remain. Indeed, the ordination of marriage to the good of the spouses is truly an

<sup>19</sup> Mendonça, 400.

<sup>20</sup> "Notio 'mutuum adiutorium' habet significationem densam et profundam, nempe complementarietatem et integrationem hominis in omnibus suis dimensionibus et gradibus" (n. 3) in Mendonça, 401.

<sup>21</sup> AAS 22 (1930) 548 in Mendonça, 401–402.

<sup>22</sup> ". . . mutuum sibi adiutorium et servitium praestant" in Mendonça, 402. Rotal jurisprudence attempted to explain the significance of "mutuum adiutorium." For example, see coram Huber of October 20, 1995: "This expression signifies not only the help mutually offered through service, but also the complementarity and interpersonal integration meant to attain a much fuller union of the two in the existential plane."



essential element of the matrimonial covenant."<sup>23</sup> Canon 1055 §1 has incorporated this idea in the definition of marriage: "The matrimonial covenant . . . is ordered by its very nature to the good of the spouses."

Civili also has recourse to some other Rotal decisions. For example, a decision *coram* Pompedda of April 11, 1988 speaks of the *bonum coniugum* in a wider sense: it is "juridically expressed through rights and obligations to a special, that is, a specific way of behaving in those interpersonal relationships that are proper to spouses and have juridical value."<sup>24</sup> Civili also cites a decision *coram* Bruno of May 17, 1996: "the good of the spouses comprises the assumption and fulfillment of all the obligations which render real an intimate union and integration of persons whereby they offer to each other mutual help in the spiritual, material and social order."<sup>25</sup>

Civili says that the *bonum coniugum* is to be found in the equal personal dignity of both the man and the woman. He refers back to *Gaudium et spes* (n. 49): The unity of marriage . . . is distinctly clear in the equal personal dignity which must be accorded to both the man and the woman in mutual and unreserved affection." This equal dignity is clearly enunciated in our law in canon 1135: "Each spouse has an equal duty and right to those things which belong to the partnership of conjugal life." He also cites a decision *coram* Boccafola of June 23, 1988: ". . . the capacity to establish an interpersonal relationship, that is, the ability to transcend one's 'ego' so that the other spouse may be recognized as a person of equal dignity, that is, as a companion in an exclusive, stable and lasting union."<sup>26</sup>

Civili clearly sees the *bonum coniugum* as demanding the recognition of the distinct personhood of each spouse and the equal personal dignity of both the man and the woman. We note again that this equal dignity is expressed in our law in canon 1135: "Each spouse has an equal duty and right to those things which belong to the partnership of conjugal life."

Civili therefore speaks of the *bonum coniugum* having two distinct elements: the *bonum coniugum* must respect the distinct personhood of

<sup>23</sup> "... est revera elementum essenziale foederis matrimonialis" in *Communicationes* 15(1983) 221.

<sup>24</sup> *Decisiones* 80 (1988) 202, n. 9 in Mendonça, 404.

<sup>25</sup> *Decisiones* 88 (1996) 390, n. 6 in Mendonça, 404.

<sup>26</sup> *Decisiones* 80 (1988) 431, n. 13 in Mendonça, 406. Gianneccchini also speaks of "equal dignity and respect" in a decision of January 17 1986 in *Decisiones* 78 (1986) 380, n. 3

each spouse, and the *bonum coniugum* must respect the equal personal dignity of husband and wife.<sup>27</sup>

He attempts to explicate further the *bonum coniugum* by speaking of certain indications that can be seen clearly as qualities of good married life. He says: "A positive act of the will against the ordination of marriage toward the good of the spouses is verified when the will of those who marry is directed contrary to both the human and Christian commitment for a continued growth in communion toward a more fruitful unity of bodies, hearts, minds and wills. [Everyone who deals with marriage knows that the unity of heart and mind is much more difficult to achieve than the unity of physical bodies.] This daily growth cannot occur unless one, by respecting the dignity of the other, gives him/herself to the other with total love that is unique and exclusive. Human dignity is based on fundamental human rights. Therefore, one who intends by a positive act of the will not to recognize the fundamental rights of the other, excludes the good of the spouses."<sup>28</sup>

Sometimes the tribunal must spend considerable attention on the question of the petitioner's credibility. His/her narrative must be beyond reproach. Information gathered from the civil divorce proceedings will also be of great value. Oftentimes information about the respondent will be found in this source. Sometimes even such a simple admission by the respondent that he "never showed any kindness or courtesy toward his wife" can be investigated by the judge as a sign of exclusion of the *bonum coniugum*.

Oftentimes the reason for such a canonical simulation is a real lack of love between the spouses. Unfortunately this is often one-sided and the other party does not recognize this emotional absence. This often manifests itself in a reluctance to engage in sexual intercourse or the continued keeping of mistresses and frequenting of prostitutes during the marital relationship. Another element that manifests itself with increasing frequency today is the lack of care or concern in making the matrimonial arrangements, leaving the planning to others, such as parents, siblings, or even wedding planners. Sometimes the anger and rage of one

<sup>27</sup> Coram Civili (November 8, 2000): "haec duo elementa essentialia bono coniugum inhaerentia desumi posunt: diversitas ratione personae et aequalis dignitas personalis cum mulieris tum viri."

<sup>28</sup> Mendonça, 407.

spouse towards the other is manifest even on the actual day of marriage celebration.<sup>29</sup>

Another sign of an intention against the *bonum coniugum* would be the development of emotional or physical illness. Civili cites the petitioner saying "Every day from the beginning of our common life there were quarrels, beatings, ill-treatment, brutality with malice; he would throw me out of the apartment and leave me out in the corridor to spend the night. . . . I lost half my weight because of ill treatment and suffering."<sup>30</sup> The petitioner's father tells us about the attitude of his son-in-law: "He did not wish or allow her to have anything good, any joy, any peace and those things which would have made her at least a little happy as a human person."<sup>31</sup>

This Rotal sentence is important because it finds for nullity precisely on the grounds of an exclusion of the good of the spouses. The court concludes that the respondent was unwilling to establish a dual interpersonal relationship with the petitioner and that this relationship should have been founded on the equal dignity of the spouses. The respondent is seen as a person who did not respect the fundamental rights of the woman petitioner, which rights are derived from her intrinsic human dignity.

E. Coram Boccafolà, June 12, 2003 (No. 17,531)

This is an unpublished sentence which Monsignor Boccafolà shared with the author in the preparation of this paper.

Here we have a matrimonial case arising in Malta, involving two young people who married on September 6, 1981. The engagement period saw many elements of dissension but Rita was convinced that John would improve after the marriage. There were many financial problems due to indebtedness and a poor employment history for John. There were no children born of the marriage. The relationship finally broke up when John went to the Canary Islands to seek work but actually did this to desert Rita for another woman.

On January 11, 1991 she approached the Tribunal of Malta to seek the nullity of the marriage "on account of a personality disorder which made him very irresponsible, [so that he] was unable to assume the obligations

<sup>29</sup> "... during the journey he was not talking to me and he persisted in his anger right through the entire wedding reception" in testimony of petitioner in Mendonça, 414.

<sup>30</sup> Mendonça, 414.

<sup>31</sup> Ibid., 415.

of marriage".<sup>32</sup> On October 29, 1994 a negative decision was given. An appeal was made to the Regional Appellate Tribunal of Malta, and an affirmative decision was given on November 15, 1995 based on a grave defect of discretion of judgment and psychic incapacity to assume essential conjugal obligations. It should be noted that no psychological expert was used in first instance, but an expert opinion was sought in the appellate hearing.

The case began at the Rota on May 4, 2000 when the judges asked for a new expert opinion (Dr. Peter Tonali). In the meantime a new Rotal auditor was assigned to the case; and at a meeting on December 6, 2001 it was determined to seek another expert opinion (Dr. Paul Cianconi). The Rota determined the grounds as canon 1095, §2 or 1095, §3 on the part of the man. Boccafola reminds us that the role of experts is to teach the judges about the existence of a psychic disturbance at the time of the marriage, about the origin and gravity of the disturbance, and about how this disturbance affects the process of deliberation for marriage and the fulfillment of conjugal obligations.<sup>33</sup>

The law section explicates how the phrasing of canon 1095 requires the explanation that marriage can be found to be invalid based on this canon in very diverse ways. Canon 1095, §2 seeks to examine internal liberty and the effect of various impulsions on the will. In 1095, §3 we look more directly at the obligations of each spouse to the marital union. Boccafola points out that while 1095, §3 is a statement of ecclesiastical law there are principles of natural law underlying the teaching. And so, it would be senseless for someone to offer what is beyond his/her capacities; and this is based on the Roman law principle that no one can be held to the impossible (Digest 50,17, 185) or as the Decretals state "No one can be obliged to do the impossible."

Boccafola reviews the teaching on the three traditional goods of marriage which comprise essential obligations. But he goes on to tell us that Vatican II teaching has consolidated the teaching that there must also be the ability on the part of the contractants to begin and to sustain the consortium of married life which is ordained to the *bonum coniugum*. He also recalls for us that Pinto considered this obligation as if it were a fourth *bonum*.

The Pontifical Commission for the Revision of the Code had said that the ordination of marriage to the *bonum coniugum* is truly an essential el-

<sup>32</sup> Coram Boccafola, June 12, 2003, (unpublished) n. 3.

<sup>33</sup> Ibid., n. 12.

ement of the marriage covenant.<sup>34</sup> Monsignor Pinto has tried to describe in greater detail the *bonum coniugum*: "The *bonum coniugum* comprises those obligations without which it is at least morally impossible to achieve that intimate union of persons and works by which the spouses offer each other mutual help and service, and to which marriage itself is ordained by its very nature."<sup>35</sup>

Boccafola also cites Bruno saying that the *bonum coniugum* is the end and an essential element of the nuptial covenant; and it is like the sum of all the goods which flow from the interpersonal relationships of the same spouses.<sup>36</sup>

Bruno says the *bonum coniugum* includes true conjugal love which is not only erotic or sexual, the total perpetual giving of body and soul in responsible fertility according to the laws established by the Creator. It fosters mutual help in good and bad times; it seeks spiritual, religious and moral improvement, peaceful and vigilant care and education of children, family peace, good social relations, etc. It is clear that the notion of *bonum coniugum* is open to greater understanding by various Rotal judges as they develop this concept.

Boccafola adds his own observation that interpersonal communication cannot be reduced to sex alone, but supposes a capacity for loving and giving so that some personal goods are shared so that the *bonum coniugum* may be built up and the end of marriage achieved. A radical incapacity to place interpersonal relations, he says, impedes the *bonum coniugum*, since it becomes impossible to assume conjugal obligations and fulfill them.<sup>37</sup>

Boccafola then digresses a bit to address the "Antisocial Personality Disorder." He turns to the German psychiatric expert, K. Schneider to support his analysis and also refers to DSM-IV 301.7 (p. 645) which tells us "the essential feature of Antisocial Personality Disorder is a pervasive pattern of disregard for, and violation of the rights of others that begins in childhood or early adolescence and continues into adulthood."

<sup>34</sup> *Communications* 15 (1983) 221.

<sup>35</sup> Coram Pinto, May 30, 1986 in *Monitor Ecclesiasticus* [1986-IV] 390 as quoted in Boccafola, n. 8.

<sup>36</sup> "Bonum coniugum, uti finis et elementum essenziale nuptialis foederis, est veluti omnium bonorum summa, quae promanant ex relationibus interpersonalibus eorumdem coniugum" from coram Bruno, July 19, 1991 in *Decisiones* 83 (1991) 406, n. 5.

<sup>37</sup> "... ut bonum coniugum aedificetur et finis matrimonii assequatur" in Boccafola, n. 8.

The diagnostic criteria should include at least three of the following indications: 1) failure to conform to social norms with respect to lawful behaviors, 2) deceitfulness, as shown by repeated lying, use of aliases, or conning others for personal profit or pleasure, 3) impulsivity and failure to plan ahead, 4) irritability and aggressiveness with repeated physical fights or assaults, 5) reckless disregard for the safety of self or others, 6) consistent irresponsibility, 7) lack of remorse, indifference to or rationalizing having hurt, mistreated or stolen from another.<sup>38</sup> We are speaking of a grave disturbance of personality which arises from personality disorders such as anti-social personality.

In assessing the factual elements of the case the judges must first of all be satisfied with the credibility of the parties. In this case both parties were deemed credible but greater credibility was attributed to the woman petitioner. Based on the factual elements the judges saw that almost from the beginning of cohabitation the conjugal partnership was unlivable and incapable of fostering the *bonum coniugum*. They find that a true community of life and love between the parties never had a chance to begin. "There was no dialogue between us and a lack of communication" the petitioner says. "We used to clash on everything . . . he did turn violent, breaking things up at home, swearing and using foul language" she says. We should listen to the evidence accepted by the judges to show the inability to create the *bonum coniugum*: "John used to treat me very badly, even in front of others, he used to denigrate me, shout at me and ignore me completely. We did not have serious clashes during the first years of the marriage because I did my best not to contradict him and to suffer his ill treatment. . . . I used to prepare his meals and he used to return home late and refuse to eat because he had his meals elsewhere. He always behaved in a very egoistic manner. When we were still paying our debts for the house, on my return from work he called me upstairs and showed me the video recorder he had bought. I objected because we could not afford to buy it, whereupon he started shouting at me and breaking up all he could find within reach."<sup>39</sup>

One of the elements that must be present to establish the *bonum coniugum* is the sharing of sexual relations. The petitioner says: "We consummated our marriage normally. After six months John rarely asked for his marital rights: we used to have intercourse about once every two months at first and later on much rarer, every eight months or so."<sup>40</sup>

<sup>38</sup> Coram Boccafola, n. 10.

<sup>39</sup> Ibid., n. 14.

<sup>40</sup> Ibid.

The judges note that despite these egoistic and irresponsible attitudes, the respondent nevertheless feels that he has chosen marriage with proper discretion and that he is capable of assuming and fulfilling the essential obligations of marriage. Boccafola comments caustically "This certainly tells us a lot about his critical estimation about conjugal obligations and his discretion of judgement."<sup>41</sup>

The father-in-law speaks of his son-in-law: "John is not a responsible and reliable person; he invents lies; he is prone to using verbal abuse and swearing a lot; he has no education whatsoever, . . . he is hardheaded, and he does not accept any other opinions. He is selfish. He is not at all mature, he is so childish that a two-year-old child is more mature than he is."<sup>42</sup> Others say "John did not relate well with anyone at home."

Even his own witnesses say "He is not the type of having friends. John was not the right type for her. At the time of the marriage he was not reliable, he was still childish and immature. I don't think he is able to make and keep friends."

All of this testimony leads Boccafola to conclude "And so there appears in examining this specific marriage relationship, on account of the strange way of the Respondent conducting himself, that the *bonum coniugum*, that is at least the minimally tolerable interpersonal relationship, was hardly able to begin or to be sustained."<sup>43</sup> He again cites *coram* Pinto of May 30 1986<sup>44</sup> telling us that the *bonum coniugum* comprises those obligations without which it is at least morally impossible for this intimate joining of persons and works, by which the spouses offer help and mutual service, and to which marriage by its very nature is ordained.

Boccafola then turns his attention to the three expert opinions that are part of this case. The first expert, employed by the second instance court, points out that John could not stick to a job and act responsibly, that he was irresponsible in the administration of finances, that he was a big liar, that he was unable to make practical judgements, that he lacked feelings, that he could not understand an intimate personal relationship and "consequently he could not even try to reach such a relationship."<sup>45</sup> Unfortu-

<sup>41</sup> Ibid., n.15.

<sup>42</sup> Ibid., n. 16.

<sup>43</sup> *Coram* Boccafola, n. 17: "Et ita revera apparet in specifico consortio coniugali in examine, ob stranum modum se gerendi viri conventi, bonum coniugum, id est, saltem minimam tolerabilem relationem interpersonalem, haud instaurari ac sustineri potuisset."

<sup>44</sup> See *Monitor Ecclesiasticus* (1986-IV) 390.

<sup>45</sup> Opinion of Dr. Chircop in *coram* Boccafola, n. 18.

nately while this opinion speaks of several personality disorders; the expert does not squarely determine the presence of one over another; and the judges seek other opinions.

And so a second opinion was sought whereby "a more certain, more accurate and definite name to the illness or anomaly on the part of the man respondent could be learned." Doctor Tonali points out that the parents of both John and Rita warned them of the danger of marrying each other. But the judges did not find the clarity they sought in this second opinion either, and so they turned to Doctor Paul Cianconi to offer expert assistance. He clearly shows the origin and influence of the anti-social personality in this case so that due to the psychic cause present in the respondent and affecting his reason and will, it was impossible for a true partnership of life and love between the spouses, that is the *bonum coniugum*, to come to be.

Boccafola tells us that the way the respondent acted in this marriage posed a grave and impossible obstacle to attaining the ends of marriage, especially the creation of a true partnership of life and love directed to the good of the spouses and of children (*ad bonum coniugum ac filiorum*). And so it was like a grave wound inflicted on the *bonum coniugum* by preventing the interpersonal relationship marked by equality of the spouses from even beginning to be established.

As they reach their concluding remarks, the judges decide not to adjudicate the matter on the basis of canon 1095, §2 on the part of the respondent even though the acts contain many valid points to sustain this grounds. They turn instead to canon 1095, §3 and show that his way of acting made a partnership of life impossible to sustain; and they declare the nullity on this ground alone. But there is no doubt that their consideration of the facts of the case provides a notable and detailed consideration of the *bonum coniugum*.

F. Coram Boccafola, March 30, 2004 (No. 18.269)

This is another unpublished sentence Monsignor Boccafola shared with the author. It is an affirmative sentence in third instance, affirming another affirmative sentence in the Rota, which gives it some additional strength. It is a case arising from Mexico.

The couple married after a brief courtship and went on a long honeymoon in Europe. A son was born who was afflicted with some diminished mental capacity. The wife was not able to take proper care of him and instead spent much time outside the home and seeing other men. They ob-



tained a civil divorce on May 28, 1992, while the husband Gerard had accused the marriage of nullity shortly before on March 24, 1992. The joinder of issue was based on canon 1095, §3 on the part of the woman, or on the part of both.

A negative sentence was issued on August 25, 1993 ; and the man appealed directly to the Rota; and a turnus *coram* Huber was constituted on September 27, 1995. A second instance decision was given on March 5, 1999 affirming the nullity of marriage on the part of the woman because of her being incapable of assuming and fulfilling the obligations of marriage. An *ex officio* appeal brings us to this third instance case *coram* Boccafola. On May 12, 2000 the concordance of the doubt was whether or not the second instance affirmative decision based on canon 1095, §3 should be confirmed or not.

Boccafola notes that the more recent jurisprudence requires not only the capacity to assume the three so-called Augustinian goods of marriage but also the ability to establish and sustain the partnership of life that is ordered to the *bonum coniugum*. He quotes a decision *coram* Anné of February 25, 1969, which states that the communion of life is an essential element of the formal consent of marriage. [*Coram* Anné, February 25, 1969, *Decisiones* 61 (1969) 183].<sup>46</sup> He also quotes Pompèdda: “the partnership of the whole of conjugal life, the essence of the communion of conjugal life is said to consist in the interpersonal integration of the spouses, either in the single and specific interpersonal relationship between them, or the mutual and essential psycho-sexual integration which is proper to marital communion.” [*coram* Pompèdda, February 19, 1982, *Decisiones* 74 (1982) 88, n. 5]. He also cites Stankiewicz: “each spouse has the obligation to give the other and the right to seek from the other not only the help for the remedy of concupiscence and for the generation and education of children, but also the right to the good and perfection of the spouses themselves, taken in their totality, and not only in their sexual or generative dimension” [*coram* Stankiewicz, June 21, 1990, *Decisiones* 82 (1990) 525].<sup>47</sup>

The judges resort to experts to seek some psychic anomaly, which must be grave enough to render the partnership of life truly intolerable for the spouse. This must be an actual incapacity, a true impossibility of fulfilling some essential matrimonial obligation and not just a mere diffi-

<sup>46</sup> *Coram* Boccafola (2004), n. 4.

<sup>47</sup> *Ibid.*, n. 5.

culty of living a common life; and this is the true source of matrimonial nullity.<sup>48</sup>

Boccafola tells us that psychic or affective immaturity can more easily be described than properly defined, but generally consists in an incongruous and infantile way of acting on the part of an adult who is of age, either because of a defect of functional autonomy in controlling oneself or a defect of development of personality or character.<sup>49</sup>

In this case the opinion of the psychological expert shows the incapacity of the woman to assume and fulfill essential conjugal obligations related to the *bonum coniugum* and the *bonum proles*.

And so, the judges conclude that the wife's way of acting was a grave obstacle to attain the ends of marriage, especially the creation of a true partnership of life and love directed to the *bonum coniugum ac filiorum*. This way of life constituted a grave violation of the obligation of initiating an interpersonal relationship marked by equality and parity and providing for the *bonum coniugum* and the education and raising of children.<sup>50</sup>

#### G. Some Conclusions.

The concept of the *bonum coniugum* and the possible simulation of marital consent by exclusion of this good of marriage are examined in the Pinto and Civili decisions given above. This jurisprudence is based on canonical principles underlying our Christian understanding of marriage; and so we can say with confidence that the canonical notion of *bonum coniugum* does indeed enjoy juridical relevance.

This jurisprudence shows that the partnership of the whole of life is ordained to the good of the spouses and so must be considered an *essential element* of marriage.

These Rotal sentences tell us that an intention against the *bonum coniugum* is proven best by an examination of the couple's behavior, i.e., actions speak louder than words in most cases. Often that behavior is detailed by persons other than the perpetrator who declines to participate.

Sometimes this misbehavior derives from an intransigent error which influences the will of the perpetrator.

<sup>48</sup> Ibid., n.6.

<sup>49</sup> Ibid., n.7.

<sup>50</sup> Ibid., n. 14.

Today we must also be concerned about cultural influences that can determine the way a person thinks or acts. Sometimes what we might call church values in marriage are hardly a concern to the people seeking to marry. Then it is not too difficult actually to exclude that type of marriage that the Church proclaims and should come to be by the consent of the parties.

It will take some time to appreciate better the significance of *interpersonal complementarity* in understanding the *bonum coniugum*. What is really the *unique personhood of each spouse*? What is the *personal inviolable dignity of each spouse*? Undoubtedly there will be greater understanding of this terminology in future jurisprudence.

Monsignor Pinto tries to find a basis for an exclusion of the *bonum coniugum* in the canonical doctrine of error which has a long and complicated history in itself.

Monsignor Civili makes a notable contribution by identifying as essential components of the *bonum coniugum* the distinct uniqueness of the personhood of the spouses in a marriage and the recognition of the human dignity of each spouse in the relationship. He points out that it is on the basis of belonging to the human race that certain inalienable rights belong to each individual person; and these rights are related to the well-being of each person, especially in a matrimonial relationship.

We are coming to learn that certain psychological defects such as a narcissistic personality or an antisocial personality can make it truly impossible for a person to appreciate the social integrity and well-being of another human being. This is the hinge that gives us a better understanding of what the *bonum coniugum* entails. There is no doubt that the *bonum coniugum* has elements that must be found in the physical, emotional, moral, and spiritual well-being of the person.

One may also ask if the intervention of a psychological expert is required to pursue the proof of this exclusion. Civili clearly thinks not. In fact in the case he adjudicated the availability of a psychological expert would have been nearly impossible in the tribunal of origin. Boccafola supports the assistance of psychological experts in cases of this type. So ecclesiastical judges must do their own homework on this issue and develop a jurisprudence that stands on its own with or without the support of outside experts but based on knowledge obtained from other canonical standards of proof.

Monsignor Boccafola seems to depend more on the jurisprudence of canon 1095, §2 and §3 and relies on the opinion of court experts to show

the anomaly which makes it impossible for a spouse to establish the *bonum coniugum* because of a failure to assume and fulfill the obligations of marriage.

In conclusion then, it is the author's opinion that the grounds of exclusion of the good of the spouses will become more frequent in the years ahead. The jurisprudence will become more familiar and fuller. More and more situations will come to our attention in the years ahead and we will take them into account as we develop this important ground. It will help us understand better the theological underpinnings of our teaching on marriage. In a most fundamental way it is the giving and taking of two individuals that gives true significance to the personalist understanding of Catholic marriage and the value of human interpersonal behavior which must be seen as an essential part of the marriage covenant.

Thirteen years ago<sup>51</sup> the author expressed a hope that we would see development in the notion of "conjuality" that was being presented by Monsignor Cormac Burke. The author also expressed a hope that we would learn more about a notion presented by Monsignor Stankiewicz, the current dean of the Rota, that he called "psycho-sexual communion" of the spouses. The author also expressed a wish that we would have greater input from psychiatrists and psychologists for a deeper understanding of marital consent and the *bonum coniugum*. Monsignor Boccafola seems to have taken this route. The author is happy to say now, twelve years later, that we have a much better and stronger jurisprudence to work with. The notion of the *bonum coniugum* goes to the very heart of what makes a good marriage work for the personal growth of the husband and the wife and the domestic church they are both responsible for.

<sup>51</sup> William A. Varvaro, "Rotal Jurisprudence 1985-1990," in *CLSA Proceedings* 55 (1993) 156-166.