[Married] love is fecund (fruitful). It is not confined wholly to the loving interchange of husband and wife; it also contrives to go beyond this to bring new life into being. ‘Marriage and conjugal love are by their nature ordained toward the procreation and education of children. Children are really the supreme gift of marriage and contribute in the highest degree to their parents' welfare.’”

(Humanae vitae no. 9)

Simulation Contra Bonum Prolis • Canon 1101

Exclusion of the Good of Children

By: Anthony St. Louis-Sanchez, JCL

Marriage is a life-long union of one man and one woman. This union serves several purposes. On the one hand, the man and woman pledge their love to each other so that they can spend their lives together, helping each other and loving each other. Husbands and wives are to be intimate helpmates for each other. On the other hand, the man and woman commit to each other by
joining their bodies for the procreation of children. Husbands and wives are to be fruitful with their love.

2 This intimate and loving union, which we call marriage, is established through a gift of self of the spouses to each other. This gift of self must be freely given, and it must involve the whole of one’s self, not holding anything back. One expression of this total gift of self is the gift of one’s body to the other for sexual acts open to life.

3 Married sexual intimacy helps to bond the couple together and provides for the procreation of children. These two qualities of marital love are called the unitive and procreative aspects. In Humanae Vitae, we read, “if each of these essential qualities, the unitive and the procreative, is preserved, the use of marriage fully retains its sense of true mutual love” (Humanae Vitae, n. 12). It is only by keeping these two aspects of sexual intimacy together that the married couple lives in accordance with God’s design.

4 Even though sex is pleasurable and desirable, the gift of one’s sexuality given to another is essentially a selfless act. The sexual act is selfless insofar as it is open to possibilities. Marital love is open to the possibility of procreation, open to the possibility of true intimacy, open to the future of a life lived together.

5 Although, if we are not on guard against our own sinful tendencies, then sexual intercourse can become a selfish act. Archbishop Samuel Aquila recently wrote, “Until recently, marriage had been understood by our society to be a complete gift of self, […] Now, marriage has become a means of personal fulfillment that lasts only if it pleases both parties. Sex itself has been changed from a gift and source of life in the family to a means of pleasure and self-satisfaction” (Most Rev. Samuel Aquila, Pastoral Letter, Splendor of Love, n. 15).

6 Such selfish love is dangerous for the long-term stability of the relationship between a husband and wife. Selfish love causes us to turn inward; it isolates us from others. Selfish love leads only to unhappiness and loneliness.
Not only can selfish love lead to the ultimate demise of the relationship, but it can also cause the marriage to be invalid from the beginning.

The jurisprudence of the Roman Rota has identified two general ways that marriage can be invalid due to the exclusion of children: “If by a positive act of will a person either excludes children, i.e., positively rejects the idea of children (Suppl. q. 49, art. 3) or denies in marriage the mutual right to those acts which are per se apt for the generation of children, then that person contracts invalidly” (coram Davino, 17 Dec. 1978). In other words, a marriage is invalid if one of the parties says, “I will not have children in this marriage,” or if one says, “I will not give you access to sexual acts suitable for procreation.” Such an exclusion can be permanent or temporary.

When contracting marriage, the man and the woman give the gift of self to the other. This includes the right to have sexual acts open to life. This gift of self for sexual acts is sometimes known as the marital debt. The spouses owe it to each other to hand over their bodies for intimate and loving sexual acts. Such acts strengthen the relationship and provide for children.

However, we find all too often that couples approach marriage with a certain contraceptive mentality. It is common to find a young bride on the pill, or a young couple using condoms in their illicit premarital intercourse.

Contraceptive acts destroy the natural integrity of the sexual act by severing the unitive and procreative aspects. Yet, such extreme measures are often chosen because of the apparent security that they bring. Couples who contracept are doing so to avoid an unwanted pregnancy, or to avoid sexually transmitted disease. Yet, they bring this contraceptive mentality with them into the marriage. Such a mentality says that the individual is the ultimate decider about children, that children are an inconvenience and will be accepted into the marriage only when the conditions are right.

The problem is that such a mentality is fundamentally opposed to the generous gift of self that marriage requires. If a bride is continuously on the pill, how can she truly give her body for sexual acts suitable for procreation? Or, how can a
This is not to say that married couples do not have the right to participate in the procreative process to the extent of deciding how many children can reasonably be supported, and even participate in the timing of these births. Pope Paul VI, in his Encyclical Letter, *Humanae Vitae*, defined the notion of responsible parenthood: “With regard to physical, economic, psychological and social conditions, responsible parenthood is exercised by those who prudently and generously decide to have more children, and by those who, for serious reasons and with due respect to moral precepts, decide not to have additional children for either a certain or an indefinite period of time. […] the exercise of responsible parenthood requires that husband and wife, keeping a right order of priorities, recognize their own duties toward God, themselves, their families and human society” (*Humanae Vitae*, n. 10). But the Pope warns that “each and every marital act must of necessity retain its intrinsic relationship to the procreation of human life” (*Humanae Vitae*, n. 11).

The jurisprudence of the Roman Rota recognizes that a reservation and reluctance of giving the body for procreative sexual acts can cause matrimonial consent to be invalid. We read in one decision from the Rota: “If someone presumes to reserve to himself according to his own pleasure and choice, if, to what extent and when children are possibly to be conceived, neglecting and spurning altogether the rights of the other partner, holding himself as the sole source of conjugal rights, he renders the marriage null because this manner of acting constitutes not only the denial of the right to the other partner, but also the denial of the handing over of that right to the partner” (*coram* Buttone, 11 Dec. 2003, n. 12).

The Roman Rota makes a distinction between the abuse and exclusion of the right to sexual acts suitable for procreation. We read: “As sound jurisprudence has always held, however, a simple exclusion of children which does not touch the ‘right itself’ is not sufficient. The distinction, therefore, between the abuse of marital intercourse and the exclusion of the right to offspring remains in force” (*coram* Colagiovanni, 15 Dec. 1983). The right itself is excluded if the other partner does not have the possibility of having…

bridegroom who is committed to the use of condoms give himself without reservation? Contraceptive use is a substantial reservation, that is, a holding back of the body for procreation and guarding that power closely.
access to the other’s body for intimate sexual acts without contraceptive barriers. On the other hand, the right is merely abused if both parties happily contracept together, while each maintaining the concrete right to ask for sexual acts suitable for procreation.

Therefore, we can generalize and say that a unilateral decision, that is, a decision made by only one party, to use contraceptives without affording the other party the concrete possibility of having sexual acts open to life renders the marriage invalid. Whereas, a bilateral decision, that is, a decision made by both parties together, to use contraceptives implies that both parties have the right to ask, at any time, for non-contraceptive acts. Thus, a bilateral decision does not fundamentally limit a person’s right to non-contraceptive sexual acts.

A unilateral decision to exclude children does not have to be permanent for the matrimonial consent to be invalid. We read in one decision from the Roman Rota: “The question of the temporary exclusion of children should be considered carefully. If this temporary exclusion was made by mutual agreement of the parties, it does not invalidate the marriage since the "intentio prolis" [i.e., intention for children] was present (cf. Suppl., q. 49, art.3). This is so even if the actualization of the intention is deferred to the future. Such an agreement will not always be prudent for the ultimate stability and happiness of the marriage. Despite this, and presuming the use of means that are licit, in most cases it can correspond to the ‘responsible parenthood’ that has been put forth in recent magisterial teaching.

“On the contrary, if a unilateral exclusion of children for an indeterminate time is present (which can be made in absolute terms dependent on the fulfilment of certain conditions), then the consent exchanged is inadequate. Such an exclusion corrupts the nature of the marital self-giving and it violates the right of the other party to find a marriage partner who is open to the possibility of bearing children. A serious wrong is thus inflicted on a person who is capable of having children and who desires children if the person must remain in this invalid bond” (coram Burke, 15 Dec. 1994, n. 11). A unilateral decision to not have children for the first few years of marriage, even if that decision is made in good faith and for the benefit of the marriage, renders matrimonial consent invalid because it denies the other the concrete possibility
of having sexual acts open to life. The parties are able to freely deny themselves this right, but it cannot be positively denied by anyone.

Contraceptive means are always illicit, whereas natural family planning can be licit. Although, even natural family planning can be used to exclude children: “If, one of the parties contracted marriage with the intention of limiting the matrimonial right itself to the periods of sterility, and not only its use, in such a manner that during the other days the other party would not even have the right to ask for the debt, then this would imply an essential defect in the marriage consent, which would result in the marriage being invalid, because the right deriving from the marriage contract is a permanent, uninterrupted and continuous right of husband and wife with respect to each other” (Pope Pius XII, Speech to Midwives, 29 October 1951).

In determining whether a certain marriage is invalid due to the exclusion of the good of children, we must pay close attention to the actions of the parties. Often, a person’s actions reveal the intention hidden in the heart. Accordingly, if a marriage was characterized by a continuous and constant use of contraceptives, then we can say that the concrete possibility for sexual acts suitable for procreation was never truly exchanged. We read: “Continuous and determined denial of natural copula and unremitting use of contraceptive means during common life openly show that the prevalent intention of the parties was not merely to limit the use of the right, but was principally to deny directly the right itself” (coram Bruno, 30 March 1984).

Thus, contraceptive acts are harmful to a healthy marriage relationship because they sever the unitive from the procreative aspects of the sexual act. Also, if one party unilaterally decides to use contraception, without input from the other, then the concrete possibility of having access to sexual acts open to life is denied, and matrimonial consent is invalid.
The judges of the Metropolitan Tribunal of Denver gave a presentation on Saturday, April 21, 2018, at Spirit of Christ Catholic Community, to the Divorce Ministry group at the parish. The presentation was composed of three parts. The first part examined some fundamental issues pertaining to the Church’s Theology of Marriage, the second part consisted of a brief presentation about the various reasons why a marriage could be declared invalid, and the third part examined some fundamental principles which Tribunals use to judge marriage cases as well as an overview of the Tribunal procedures. The presentation was well attended, and there was an engaging Q & A session.

Presentations of this kind allow persons in the parish who have questions about the Church’s teaching on marriage, or questions about the marriage nullity process, to come and have their questions answered by officials of the Tribunal. Often, there are perceived barriers between parishioners and the Tribunal. A presentation like this may help to tear down these barriers and show that the ministers of the Tribunal are compassionate, approachable and always striving for fidelity to Christ. If you are interested in having the Tribunal give a presentation at your parish, then contact Lucinda Marques at 303-715-3148 to inquire about the possibility.

The mission of this Divorce Ministry is to provide compassionate Christian education and awareness that help those dealing with separation or divorce, to heal and rebuild their lives. This program is a DVD-based series with accompanying materials that bring top Catholic experts on Church teachings,
relationships, love, sex, marriage, divorce and marriage nullity to the parish level. The twelve presentations feature the personal testimonies of twelve divorced Catholic men and women who share their real-life stories of hope and healing.

The parish program includes ongoing leader support, personal guides for the group participants, and a website with links, downloads, and other helpful information for anyone who wants to know more about what the Catholic Church teaches relative to love, sex, marriage, divorce and annulments. The primary goal of this program is to lead those who are suffering and in need of answers (in this case, those who have been separated or divorced) to a more intimate knowledge of and love for Christ, through his Church.
1. I am the advocate helping the petitioner complete the “100 questions” and the *libellus*. During this process we reached out to the Respondent, who then filed a petition in her local Tribunal. Since both parties have petitioned for the annulment, which one will have precedence over the other? Or will it play out in the end that both will be granted?

Either party to the marriage has the right to petition the Tribunal for a declaration of nullity. In cases where the parties live in different dioceses, it may happen that each will petition a different tribunal. The current law regarding which Tribunal is competent (has jurisdiction to hear the case) is as follows: (1) if the marriage took place in that diocese, (2) if either party to the marriage lives in that diocese, and (3) if the majority of the relevant evidence or proof is located in that diocese.

Thus, occasionally, there will be two petitions presented to the same or different Tribunals. The law to be observed in this situation is canon 1512 § 2 “When the citation has been communicated legitimately or the parties have appeared before the judge to pursue the case the case becomes proper to the otherwise competent judge or tribunal before which the action was initiated.” Thus, the first Tribunal to cite the respondent becomes the competent Tribunal. Both parties should continue to participate in the process until the Judgement is given. If both parties agree with the grounds, the Tribunal may also consider if the case may qualify for the “Briefer Process.”
2. It was brought to my attention, that a name was spelled wrong in the Baptismal certificate, can I make a correction after having reviewed the birth certificate? It was my understanding that the information on a Baptismal record can never be changed.

Per the Pastoral Handbook, information can never be removed from a record (names of parents, sponsors), however a record can be amended if the information recorded at the time of the sacrament was proven to be incorrect (with a birth certificate or other legal document) such as a misspelling, wrong date of birth etc… On the record you would make the correction in red pen and date it. You will also keep copies of the documents used to make the correction in this case the birth certificate with the record.

3. I have a young couple that want to get married. The bridegroom was married before. He and his ex-wife were married BEFORE they were even baptized (they eventually got baptized protestants) Their marriage was non-sacramental. Does he have to go to the whole annulment process, even though his marriage was not sacramental?

Canon law defines natural marriage (non-sacramental) this way: "The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life, is by its very nature ordered toward the good of the spouses and the procreation and education of children" (Canon 1055, § 1). Marriage comes into being through lawfully established consent — that is, there must be accepting of the other as spouse in a way perceptible to the community. When two people give themselves to one another in order to create a partnership of life and love (marriage), and they do so in a manner recognized by the community, they marry. For two unbaptized people, this can be in front of a justice of the peace in a public park.

The Catholic Church presumes the validity of any marriage between two people who are free to marry at the time of their wedding, (they must have no previous marriages) since marriage, as God created it, is permanent, then the Catholic Church must also investigate these marriages. Because the non-Catholic wishes to marry a Catholic, the Church's law applies to the intended marriage, since canon law still binds the Catholic whom the non-Catholic wishes to marry.

The Catholic Church believes her teachings concerning the essence and the properties of marriage bind all people, regardless of whether they are Catholic, as part of God's natural law.

In certain circumstances, when there is a non-sacramental marriage we can use the Pauline Privilege or the Petrine Privilege. In these cases, the marriage is not declared null, but is dissolved. In this particular case, we cannot use the Pauline Privilege because both parties
were later baptized. Only one party must seek baptism in order to apply the Pauline Privilege. The Petrine Privilege (more commonly known as Favor of the Faith) may apply, but must be sent to Rome. The Formal Ordinary process for Declaration of Nullity, may always be applied if grounds for nullity can be provided.

**Below is a very brief description of the Pauline Privilege:**

Pauline Privilege refers to the dissolution of a marriage between two unbaptized persons.

To invoke the Pauline Privilege:

a. Both parties must have been unbaptized at the time of marriage, and the other party must still be unbaptized.

b. Proof of non-baptism of both parties at the time of the marriage must be established.

c. The Petitioner must sincerely seek to be baptized.

d. The other party does not intend to be baptized and does not wish to be reconciled with the Petitioner.

**Below is a very brief description of the Petrine Privilege:**

(Favor of the Faith)

Favor of the Faith refers to the dissolution by the Holy Father of a marriage in which at least one party remained unbaptized during the entire period of common life. The conversion of the Petitioner is not required in all cases.

Conditions:

1. All honest attempts at reconciliation have failed.

2. The non-baptism (before and throughout the course of the marriage) of at least one of the parties to the marriage has been established.

3. The Petitioner and the prospective spouse or present civil spouse where not the culpable cause of the breakup of the marriage.

4. The petitioner has a prospective (or present) new spouse. (There may be exceptions in certain cases.)

5. No scandal may result from the granting of the dissolution.
6. The promises (cautiones) must be signed by both the Catholic and non-Catholic party should a dispensation for disparity of worship or permission for mixed religion be required for the proposed new marriage.

7. If, after the breakup of the marriage in question, the unbaptized party became baptized, nonconsummation must be proven.

8. Efforts must be made to secure the present whereabouts and testimony of the Respondent.

9. A Catholic Petitioner must do everything possible to ensure the religious education of the children from the former marriage.

10. The principles of justice toward the previous spouse and any children of the former marriage must be fulfilled by the Petitioner.

11. The Catholic parties must seriously practice their Faith
Mrs. Laurie Nash grew up near beautiful Swan Lake in northern Minnesota. When she graduated from high school near the resort town of Pengilly, her plans included joining the work force as a court stenographer or office assistant. Typing was in her blood! However, it was 1975 and women were being hired by local Iron Ore Mines for many positions traditionally held by men. Thus began 11 years of hard labor in a greasy, dirty and noisy taconite mine owned by U.S. Steel. She loved it! These were the Iron mining “boom days” of the 1970’s and 80’s.
Rough times fell on the Iron Range ‘coincidentally’ around the time she met her future husband Patrick Nash, who had a brother living in Denver. The couple decided to move to Colorado and have lived here ever since.

In 1993 the Holy Father, St. John Paul II, “the Great” changed the lives of many Coloradans when he came here for World Youth Day. This couple had been away from the Church for many years, but Grace overflowed as Laurie and her husband Patrick were brought back to the Catholic Church and eventually were able to have their marriage validated.

After working 23 years with the University of Denver as a security guard, she took some time off from work and began volunteering at her parish, St. James ‘the less’; helping out in the office, learning to be a sacristan and becoming a cantor where she enjoys praising our Lord with a joyful voice at the 8:00 a.m. mass most Sunday mornings. After doing some transcribing for the Tribunal in 2014 she came to work as the Receptionist/Transcriptionist. At last, that office job she had dreamed of so long ago! All in God’s time! Praise him!
Canon 1095: A Psychological Perspective

SAVE the DATE

Workshop for Advocates
Sep. 29 or Oct. 13

The Metropolitan Tribunal & St. Raphael Counseling will present a Canonical and Psychological perspective on Canon 1095 §2 – Lack of Due Discretion.

Mark your calendars for this essential workshop.
LOVE IS FREELY GIVEN

[Married love] is above all fully human, a compound of sense and spirit. It is not, then, merely a question of natural instinct or emotional drive. It is also, and above all, an act of the free will, whose trust is such that it is meant not only to survive the joys and sorrows of daily life, but also to grow, so that husband and wife become in a way one heart and one soul, and together attain their human fulfillment.

(Humanae vitae no. 9)