narrowed down, over the course of the case, into more specific diagnostic terms, especially in the area of personality disorders or of serious neuroses relating to the object of consent. This goes to prove, precisely, the fact that the gravity that must be established is correlated with the sure presence of an outright anomaly essentially harmful to the subject's natural faculties.

To conclude the discussion about substantive law, we must make some mention of the topic of proving a possible involuntary defect of consent along the lines of canon 1095, 1° and 2°. Indeed, the reader has certainly already asked himself several times: But how is it possible to prove everything that the law, authoritative doctrine, and jurisprudence require?

Essentially, the proof of incapacity can be structured around a threefold assessment: (1) the reconstruction of the constituent acts and behavior of the subject, in particular those most closely related—in time or importance—to the decision to marry; (2) the reconstruction of the subject's possible clinical history; and (3) the in-depth study by an expert of the subject's psychological condition. Obviously, this threefold assessment should be adapted to the concrete demands of the case, which may result in the prevalence of one of the three types of assessment mentioned. It is clear, for example, that in the case of a psychotic illness with pre- and post-nuptial hospitalization, the documentary reconstruction of the subject's clinical history will have decisive weight, whereas in a case of alleged acute alcoholic intoxication, it would make little sense to have an expert investigation, especially years after the fact. With respect to the three types of assessment pointed out, we can say the following by way of summary.

As for the facts to be reconstructed concerning the subject's behavior, it will be advisable to recall that they—being within the scope of the judge's work and responsibility—must be reconstructed with particular accuracy. Indeed, as canon law clearly prescribes, it is possible to make presumptions and logical deductions only on the basis of certain and determinate facts (cf. can. 1586). This reconstruction is of great importance also for the purpose of providing trustworthy material to the expert for his professional interpretation. In fact, the value of this interpretation will obviously be diminished if it turns out to have been based on facts—considered "symptoms" of a relevant anomaly—for which no actual proof is shown. Thus, for example, it

will not be enough that someone is willing to declare as a witness that so-and-so, who is allegedly incapable, appeared "strange" to him. This assertion, indeed, remains a mere opinion devoid of probative value until the person who makes it explains what criteria and, above all, what facts his opinion is based on.

It seems clear also that these facts will be of greater importance the closer in time they are situated to the matrimonial consent and the more they pertain to one of the marital obligations. Indeed, it would be strange to think for example that we could consider someone incapable of assessing these obligations with sufficient use of reason, or that he had seriously lacked discretion of judgment concerning them, if it turned out that for his part he had observed said obligations, maybe even for a very long time.

Since incapacity to marry, and consensual incapacity as well, must be based on an anomaly that substantially impairs the natural faculties of intellect and will, it will be necessary to reconstruct the clinical history of the subject—in other words, the course of possible contacts with doctors and clinical institutions, of treatments and institutionalizations. The absence of such a clinical history (except in rather exceptional cases of acute intoxication with psychotropic substances or even more exceptional episodes of autosuggestion) will not normally go to prove incapacity. This is not to say that the lack of a clinical history is an invalidating obstacle to a proof of incapacity. There are indeed some personality disturbances, for example, that experts describe as "ego-syntonic"—in other words, they are not disturbing to the subject but are disturbing only to others. For this reason the subject might be convinced that he is perfectly well and has no need of medical treatment and therefore would not seek it unless compelled by others. What this means, rather, is that the lack of a clinical history is generally—absent evidence to the contrary—an unfavorable indication in trying to prove a consensual defect. It is only an indication, since the judgment about the possible defect of consent is a judgment of a juridical sort that does not exhaust the analysis of its factual basis by reconstructing the clinical record. The clinical record is just one of the elements that the judge must take into consideration.

Finally, the third hinge on which the proof of possible consensual incapacity turns is the assessment by an expert, which the Code of Canon Law calls for, referring specifically to matrimonial cases (cf. cann. 1574

and 1680). In this connection it is important to recall briefly that in procedural law the expert is only a consultant of the judge and that the judge himself remains free in evaluating the expert opinion. Of course, he is free not in an arbitrary way contrary to reason or justice. The judge, instead, must make a critical reading of the expert findings (whether ex officio or requested by a party, or even extrajudicial), stating reasons for his own acceptance or rejection of the expert's conclusions (cf. can. 1579 §2). This critical reading cannot be based on arguments belonging to the expert's discipline (if the judge had already mastered it personally, he would not have needed the expert) but rather must be based on arguments that jurisprudence had already previously developed. Among these are the agreement of the expert's conclusions and arguments with the facts of the case (cf. can. 1579 §1); the intrinsic logic of the expert report; the methodology used; and the expert's contact with the individual being evaluated.

In the allocutions mentioned earlier, the Pope explained another extremely important criterion for evaluating an expert report—verifying its anthropological presuppositions, that is, the consistency of its view of man with the one formulated by Christian anthropology that, by logical necessity, is presupposed by canon law. Indeed, it is clear that an expert who in his interpretation of the facts starts from a view of the human being that is markedly different from the Christian view (e.g., a deterministic view that denies freedom almost a priori, or a view that implicitly restricts the exercise of the right to marriage only to individuals who were particularly gifted or likely to have an optimal outcome) would offer the judge a response that would be of limited applicability and hence with regard to the evaluation.

Finally, we should recall something that counselors of couples with serious marital problems should also take into account in order to encourage the responsible cooperation of all the interested parties and so as not to create facile illusions: it is difficult to complete in a useful fashion the reconstruction of an individual's clinical history and an expert examination without the sincere and truthful cooperation on the part of the person whose own capacity to give matrimonial consent is in question. Nowadays in fact it is rather difficult—because of an appropriate respect for personal matters and for professional confidentiality—to find physicians willing to testify, or else managers of health-care institutions ready to issue certificates or clinical records without the required authorizations. Even at the level of expert testimony, then, although expert testimony based on documents alone is no doubt possible, it nevertheless may not be very persuasive if the lack of contact with the interested party is not made up for by reliable clinical information already present in the documentation.

Guide for the counselor

A counselor of a couple who is considering the possibility of an involuntary defect of consent for lack of sufficient use of reason or for a lack of discretion of judgment would have to investigate the following points:

1. How the engagement went and, above all, what the reasons were for any possible difficulties or breakups. Were they due to oddities, eccentricities, or anomalous behaviors of the allegedly incapable party, and if so, which ones?

2. Whether the person who is alleged to be incapable had difficulties in any important area of life: relations with family and with other persons; study or work; fulfilling his own social obligations (e.g., military service or abiding by the laws and rules of civil life).

3. Whether the person who is supposedly incapable of consent had a clinical history of psychological difficulties. Was he treated by doctors? (If so, can they be found, and are they ready to testify?) What diagnoses were formulated, and what treatments were prescribed? Were these treatments still ongoing at the time of consent? Were there prenuptial institutionalizations: When, where, for how much time, and with what documentation?

4. How the subject spoke before the wedding about his impending marriage and about marital obligations. In particular, did he exhibit eccentric or markedly immature opinions about this topic? Was there a confrontation with other persons about these opinions, and what capacity for reasoning and self-criticism did the subject display in this regard?

5. Whether the subject was convinced that he should get married or whether instead there was some anomalous reason that drove him to

marry: for example, a pregnancy, serious scruples, or the suggestions of other persons. It will be very important to seek to reconstruct as accurately as possible the subjective weight of such external factors. Although in and of themselves they cannot constitute a substantial defect of internal freedom, it is nevertheless true that they can have considerable influence on persons who are particularly suggestible, unsteady, and predisposed.

6. Whether the subject had expensive habits that influenced his psychological state, such as the use of drugs or alcohol. What substances were taken, and in what quantity? Were there related medical interventions, and if so, with what outcome?

7. How the subject behaved during the marriage preparations and on the day of the wedding itself. Were there actions that were inappropriate in those circumstances, awkward statements, loud arguments?

8. How the subject fulfilled his marital duties. Indeed, although we must not forget that the incapacity to fulfill the obligations that one has assumed is a separate heading of nullity because of a defect of the object of consent (cf. can. 1095, 3°), it is nevertheless difficult to imagine that someone who was incapable of assessing the obligations of marriage and of resolving to assume them would then have observed them perfectly, maybe even for a long time. One would have to expect, more reasonably, some failure in the carrying out of these delegations as well.

9. What the subject's clinical history, if any, was after the wedding. Indeed, although it is true that the assessment of consensual capacity is strictly connected with the moment of consent, the study of the clinical development of the person who is allegedly incapable can shed considerable light on his actual condition at that precise moment.

10. Whether the person whose incapacity is in question is willing, in the event that a canonical cause is initiated, to subject himself to expert examination, or at least to release from professional confidentiality the doctors or institutions that may have treated him.

Examples

In conclusion, several examples are offered so as to illustrate better, with the didactic purpose typical of this book, the complex material set forth in this chapter.

First example

Julia was a young woman from a nonbelieving family, and she herself was not baptized. At the age of eighteen she began to live independently of her family, which moreover had never really taken care of her. Not having a regular job, Julia began to cohabit with a certain Troy. This was a very disorderly living arrangement from the moral perspective (there is no reason to go into detail here), which ended because Julia was a victim of domestic violence.

While socializing in "artistic" circles, Julia, who was interested in art, met a certain Pasquale, who had just been released from a treatment center for drug addiction. His rehab had been only partially successful. Pasquale in fact continued to smoke marijuana and to abuse alcohol. He was not working and had moved into a farmhouse—really a shack—owned by his parents.

Julia started to live with Pasquale. The premarital cohabitation lasted about three years. Actually, it was a disastrous experience. Pasquale had no interest in Julia as a companion, not even sexually, and he mistreated her physically. More than once she left the cabin, but she always returned. Moreover, their financial situation was extremely precarious. At Julia's initiative, the two started a very modest business of producing artisanal crafts. Pasquale, however, worked only occasionally, indulging as noted in marijuana and alcohol and neglecting also the administrative tasks related to their little business.

During those three years of premarital cohabitation Julia was approached by a local priest. Wishing to improve her knowledge of the Christian faith, Julia started to study and to consult regularly with this priest, until eventually she requested and received baptism. After receiving this sacrament, she—being an honest person and rigid to the point of scrupulosity—began to think, "I am a Christian; I am cohabiting without marriage. I must get out of this immoral situation, and