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HOMOSEXUALITY AND VALIDITY OF MATRIMONY A STUDY IN HOMO- PSYCHOSEXUAL INVERSION†

JOHN ROGG SCHMIDT*

FUNDAMENTAL CONSIDERATIONS

The above subtitle on homo-psychosexual inversion requires some explanation. Homosexuality has become a familiar and frequent term in popular communications media,¹ lesbianism perhaps less so, though it is finding its way to the street.² In this environment, popular attention has been focused perhaps predominantly upon the external homophilic behavior. In this study, the overt behavior is to be considered as a possible, probable, or certain, though by no means exclusive, indication or manifestation of the internal personality structure, which is here designated as homo-psychosexual inversion. This inversion hallmarks the true or genuine homosexual, male or female. Overt interpersonal homosexual behavior alone does not necessarily do so; circumstances of times, places, occasions, continuation, and affirmation must be considered conjointly therewith. In this context, the positive aspect and attitude of the psychosexual invert toward the same sex as set forth quite concisely by Dr. Harry Benjamin is of considerable value: "Therefore, when I speak in my following remarks of homosexuality, homosexuals or homophiles, I shall be referring to those individuals only who are exclusively or predominantly sexually aroused by members of their own sex. We may call those who are equally or almost

† This article is reprinted from 32 *THE JURIST* 381 (1972). This is the first installment of Father Schmidt's definitive study of homosexuality and marriage.

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¹ Cf. e.g., "The Homosexual: Newly Visible, Newly Understood"—*Time*, Oct. 31, 1969, pp. 56, 61-67; a good, popular summary. The subject in the U.S.A. obtained international notice in *Frankfurter Allegemeine Zeitung*, Samstag, 7 November 1970, Number 259.

² Cf. Klemesrud, Judy, "The Disciples of Sappho, Updated"—*The New York Times Magazine*, Mar. 28, 1971, p. 38-52; Ross, Nancy L., "Surveying Women's Lib"—*The Washington Post*, Thurs. Mar. 9, 1972, p. 4. In this context, see the notable prediction on the increase of lesbianism in Caprio, F., *Variations in Sexual Behavior* (New York: The Citadel Press, 1963), pp. 160-161.

equally attracted by both sexes 'bisexuals' (or better 'psychological bisexuals')."³

The expression "sexually aroused" is perhaps better understood under the broader term of erotic attraction or interest. But there is, of course, also present the accompanying very important negative aspect and disposition, namely, to a greater or lesser extent, that of rejection and withdrawal from heterosexual relations.⁴ Thus psychosexual inversion presents a double aspect. As will be noted again, genuine homosexuality is necessarily a manner or way of thinking, a continuing state or condition of disposition, not necessarily of overt activity.⁵ Frequently, the activity may be the product of the thinking, i.e. of the attitudes both adverse to the opposite sex and favorable to the same sex. Thinking and attitude in this context must be understood as inherent, in a lesser or greater degree, in the structure of the personality.⁶ In this sense psychosexual, lesbian, unless otherwise indicated by the context, are also to be understood in this same connotation.

There may be disturbing emotional consequences and overtones, of greater or lesser magnitude and import, which incidentally accompany the attitudes and functions of the psychosexually inverted personality.⁷

³ "Must the Homosexual be Rejected" in *The "Third Sex"* [a symposium of articles on homosexuality], ed. I. Rubin (New York: New Book Co. 1961), pp. 8-9.

⁴ Cf. definition by Samuel B. Hadden, in Hatterer, L., *Changing Homosexuality in the Male* (New York: McGraw-Hill, 1970), p. 15; Cavanagh, J., *Counseling the Invert* (Milwaukee: Bruce Publ. Co. 1966), pp. 18, 79. This volume presents an extensive study on homosexuality.

⁵ Cavanagh, *op. cit.*, pp. 17-18.

⁶ This exposition is frequently confirmed in the work of Hatterer, *op. cit.*

⁷ Psychiatry seems hard pressed and at pains to define and ascertain in principle what is mental "illness," if any, or similar connotations, purportedly as necessarily, or as a matter of course almost necessarily, associated with homosexuality. This consideration is forcefully brought to the fore in the report of the symposium of experts on homosexuality in *Time*, Oct. 31, 1969, p. 66. The writer is not prepared to accept the proposition that homosexuals generally, because of their inversion, are necessarily, as a rule, or almost by definition or indiscriminately seriously emotionally disturbed personalities. In accord, Ellis, H., *Studies in the Psychology of Sex*, Vol. I (New York: Random House, 1935), Part Four, "Sexual Inversion," pp. 332-333, and authorities there; Kinsey, A. et al., *Sexual Behavior in the Human Female* (Philadelphia, 1953), pp. 477-479; Rubin, I., "Homosexuality: Conflicting Theories, Part II: Is homosexuality a symptom of personality disturbance—or a conditioned response that is not necessarily immature or neurotic?" in *The "Third Sex,"* pp. 17-22, which notes the Kinsey investigations; *Encyclopedia of Psychoanalysis*, 2ed. L. Eidelberg (New York: The Free Press, 1968), s. v. Perversion, p. 304; Goldstein, M.-McBride, W. *Lexikon der Sexual Aufklärung* (Frankfurt am Main: Fischer Taschenbuch Verlag, 1972), s.v. homosexuell, p. 122. The psychiatric, contrary view: cf. Bieber, I. et al., *Homosexuality, A Psychoanalytic Study of Male Homosexuals* (New York: Random House Inc. 1962), pp. 303-305, brief observations; in Ellis, A., *Homosexuality: Its Causes and Cure* (New York: Lyle Stuart Inc., 1965), cf. esp. pp. 9, 19 and Chap. 3 pp. 78-91; Hatterer, *op. cit. passim*, e. g. pp. 15, 16; Caprio, F., *Female Homosexuality—A Psychodynamic Study of Lesbianism* (New York: The Citadel Press, 1954), *passim* e.g. pp. 302-307; *The Encyclopedia of Sexual Behavior*, ed. Ellis, A.-Abarbanel, 2 vols, Vol. I (New York: Hawthorn Books Inc., 1961), s. v. Homosexuality, p. 491, [cited *ESB*.]—The writer has devoted considerable attention and time to the literature in

Accordingly, it appears correct to state that the homo-psychosexually inverted personality structure is laced, to a lesser or greater extent, with mechanisms of defense (value appraisals and judgments) against the realities of heterosexuality considered in its total implications.⁸ Defense mechanisms are actually escapes from reality (truth). When defenses fail under sufficient psychological stress, the emotionally disturbed or troubled personality emerges, the core of which appears to be fear or anxiety.⁹ This deviant condition may be described analytically to the effect that homosexuality presents the psychosexual phenomenon of mentality and behavior pattern (personality, covert or overt), emotionally non-psychopathological or pathological, psychosexually oriented dynamically, i.e. purposefully, and either latently directed¹⁰ or actuated overtly paramountly toward the member of the same sex exclusively or non-

reference to the relatively limited area of the subject required in preparation of this study. One encounters in large and at random the concepts or expressions, such as mental disorder or defect, mental disease or defect, mental illness, sick, mentally ill, illness, emotional illness, mental disease, disorder . . . mental illness, in the psychiatric literature in general and also in respect to homosexuality in particular. These words, whatever their undefined precise functional meaning may be in their context, also filter into popular literature. Cf. e. g., *The Washington Daily News*, Mon. Mar. 13, 1972, p. 1; *op. cit.* Sat. Mar. 11, 1972, p. 20; *Time*, *cit.* p. 66. There seems to be some confusion or semantic difficulty here. The terms, illness, disease, seem borrowed from anatomical and physiological pathology; what is the precise and meaningful signification, transferred or analogical, in psychiatry? Pathology becomes psychopathology; when does the latter exist in relation to homosexuality? It would be interesting to know what appraisal a homosexual psychiatrist and psychoanalyst would assign to these terms. "Mental disease or illness:" are they synonymous with "emotional illness?" If so, why? The term, mental disorder, is comprehensible. It can mean a characterological anomaly, maladjustment, malconstruct consisting in an abiding distortion and disarray of cognitive-volitional values, value judgements, in respect to objectives of life and living which consequentially influence the action and reaction of the personality. It is thus a phenomenon in the sphere of intellection and volition fundamental to the psychodynamics, i.e. purposeful behavior, of the personality. Emotional disturbance seems not difficult to understand. It may be associated with mental disorder. Accordingly, there should result a real and clear distinction between mental disorder and emotional disturbance, and also precisely to the effect that emotional disturbance does not necessarily ensue therefrom. Cf. Devlin, W., *Psychodynamics of Personality Development* (New York: Alba House, 1965), pp. 50-52, 79-81, 100-105; Cavanagh, J.-McGoldrick, J., *Fundamental Psychiatry*, 2 ed. rev. (Milwaukee: Bruce, 1958), pp. 114, 126-129. In other words, the homosexual may well be satisfied with his condition of character and personality structure as such and as it is, divorced from heterosexuality with its involvements.

⁸ Ample evidence is furnished in the work, e. g., of Hatterer, Caprio, Ellis, A., cited in this study. Cf., e.g., specifically Cavanagh, *op. cit.*, pp. 68-69, 103; *Encycl. of Psychoanal.*, *loc. cit.*; Bieber, *op. cit.*, pp. 303-304.

⁹ Devlin, *op. cit.*, pp. 100-105, 136-138; Menninger, K., et al., *The Vital Balance—The Life Process in Mental Health and Illness* (New York: The Viking Press, 1963), pp. 125-150 and pp. 162-163 sqq.; *Encycl. of Psychoanal.*, s.v. Bisexuality, p. 53; Bieber, *loc. cit.*, and pp. 305, 309, 318.

¹⁰ On this point, cf. esp. Cavanagh, *op. cit.*, pp. 78-81.

exclusively, and withdrawn from the opposite sex in corresponding inverse ratio.¹¹ This description aids in understanding that psychiatric literature recognizes genuine homosexuality as such as a style or manner of life characterologically ingrained in the personality, as is also revealed in sources of popular information.¹² But one may state that genuine homosexuality, as scientifically known (psychosexual inversion), is popularly not as well understood; it does not consist merely in overt homosexual, erotic encounter.

The following is an attempt to indicate that the genuine homopsychosexual personality may be of such character and proportions adverse to the marital hetero-psychosexual encounter, that it may be found as *ab initio* of matrimony as incapable of sustaining, and hence fatally detrimental to, the matrimonial consortium (the *consortium omnis vitae*). Matrimony may, accordingly, be found invalid immediately and directly precisely because of the incapacity *ab initio* on the part of the psychosexual invert to sustain the matrimonial consortium, aside from and independently of the issue of impotence in coitus (*impotentia coeundi*), if any, or of the consummation of matrimony, if any.¹³ This psychosexual situation or condition in its dimensions vis-a-vis the dimensions of the matrimonial heterosexual partnership is quite analogous in principle to the incapacitating condition of anatomical or psychophysiological (psychosomatic; somatopsychic) impotence to effect coitus. In a word, the focus of attention is here directed to the homosexual personality with its failure of capacity to exercise the heterosexual behavior essentially required to maintain and sustain the matrimonial companionship (*matrimonium in facto esse*). On the other hand, in view of the previous observations, the condition of homopsychosexual inversion in itself and as such, in whatever degree it may exist in a confirmed state, does not seem to warrant a direct action of defect or failure of due matrimonial consent on the part of its subject, in a judicial matrimonial procedure of nullity.¹⁴ The *mens homosexualis* of the psychosexual invert does not *per se* necessarily embrace disturbance of the cognitive-volitional faculties in reference to and required in the matrimonial consent (*matrimonium in fieri*). Throughout the development of the present topic, attention is focused upon the homo-psychosexual personality, not merely upon its intellection and volition.

¹¹ This description is compiled by the writer from the symposium of articles in *op. cit.*, *The "Third Sex."*

¹² Cory, D. W.-LeRoy, J., *The Homosexual and His Society—A View from Within* (New York: The Citadel Press, 1963) and cf., e.g., Ross, Nancy L., "Gay is Good—Homosexual Revolution," *The Washington Post*, Sat. Oct. 25, 1969, p. C1; "The Homosexual in America"—Time Essay, *Time*, Jan. 21, 1966, pp. 40-41; "The Sad 'Gay' Life", *Look*, Jan. 10, 1967, pp. 31-33.

¹³ Cf. *Codex Iuris Canonici*, can. 1068, § 1, 1081, 1015, §1-2.

¹⁴ Cf. *CIC*, can. 1081, § 2, and 1082.

This study was prompted by and is considerably indebted to the work of the Reverend Dr. William J. Tobin,¹⁵ and the likewise valuable studies of the Reverend Dr. John R. Keating.¹⁶ The immediate, practical, substantive subject matters dealt with in first instance in the work of Tobin are the presence of homosexuality, whatever may in each case be its nature and degree, in the state of matrimony and the issues regarding the consequent coital non-consummation of the matrimony with its ensuing factual and subsequent juridic dissolution. These considerations form a foundation for the ultimate direction and progressive course of his study. In effect, they form the basis of additional deliberations and conclusions, under advanced canonical jurisprudence, concerning the validity of matrimony in the presence of homosexuality.¹⁷ In this latter respect, the work of Tobin becomes associated with the studies of Keating and with the subject matters of the present study.

It is necessary at this point to establish the general orientation of the discussions herein offered on the present topic precisely in respect to the canonical, jurisprudential approach thereto. This purpose is sufficiently achieved by references from the "Concluding Remarks" in the text of Tobin (pp. 304-307). These, *inter alia*, include the major points of concentration in issue, under existing canonical juridic standards, in relation to the personality structure (psychic) of the homosexual deviate, as follows:

Depending on the underlying or associated disorder, the individual may lack the necessary discretion or maturity of judgment to form an integral psychological act of marriage consent, or may be incapable of seriously assuming, sustaining, and fulfilling the marital rights and obligations. Hence the marriage bond may be non-existent because its efficient cause (naturally sufficient marriage content is lacking, or because the object of marriage may be impossible in reality (a person as a *subjectum habile* or *matrimonabile*), which are necessary in order that the marriage bond be brought into existence.¹⁸

The context of this excerpt notes the view of psychiatrists, to the effect that ". . . homosexuals frequently are *not fit subjects* [italics inserted] for the state of marriage." There is, of course, a decided difference between the psychiatric (psychological) view and the present canonical position concerning *not fit subject* in the Code of Canon Law. Such questions demand the consideration of canons 1015, § 1 3, 1068, 1081-1082, 1118, and their jurisprudential implications, and especially so in relation to the elements

¹⁵ *Homosexuality and Marriage—A Canonical Evaluation of the Relationship of Homosexuality to the Validity of Marriage in the Light of Recent Rotal Jurisprudence* (Rome: Catholic Book Agency, 1964). This work may be considered a companion volume to that of John R. Keating, *op. cit. infra*.

¹⁶ Esp. *The Bearing of Mental Impairment on the Validity of Marriage—An Analysis of Rotal Jurisprudence* (Rome: Gregorian University Press, 1964,) reviewed by the present writer in an article in *The Jurist*, XXV (Oct. 1965) 466-484.

¹⁷ Cf. *op. cit.* pp. 272-278, 304-307.

¹⁸ *Op. cit.*, p. 305, at n. 4.

of canonical impotence, substantial unfitness, and indissolubility in matrimony.¹⁹ Perhaps future canonical legislation can to some extent, at least, abridge the difference, a reconciliation which is most desirable.²⁰ The "Concluding Remarks" continue: "Frequently, homosexuality may be the cause of, or associated with, a psychological impotent condition for heterosexual relations."²¹ Reference here is to canon 1068, on impotence (*impotentia coeundi*). This latter Remark and the foregoing one are quite similar in respect to the basic anomaly. That is, both refer to the factual problems involved in ascertaining the actual psychic inability (*inhabilitas*), unfitness, to bring into existence a valid marriage, but for specifically different reasons. As stated, the latter Remark refers directly to psychic coital (copulation) impotence, i.e. incapability of penile-vaginal penetration with semination, what may be called psychosomatic, and described as psychophysiological, impotence.²²

The "Concluding Remarks" also note:

For various reasons homosexuals may exclude marriage itself or any of its essential properties. The proportionate reason or motive for the exclusion is the key question in the area of proof, but this may take the form of a subjective persuasion or obsession. When marriage is entered on a trial basis, frequently children will be excluded also. . .²³

Canon 1086 is in contemplation here. Factual motive, whatever its specific character may be, is a most important component in the structure of evidence in respect to these questions. It is properly pointed out by a learned jurist, and axiomatic at law, that the state of mind is as much a fact as is the state of one's digestion. Moreover, matrimonial cases brought upon the allegation and alleged effects of homophilism frequently involve the question of non-consummation of marriage as an alternative pleading, as noted also in the work of Tobin. Evidence concerning motivation for alleged non-consummation likewise plays an important role.²⁴

Finally, the "Concluding Remarks" note a contingency of the type similar to that just considered, regarding lack of matrimonial consent; to wit:

If the other partner has reason to doubt the present or past homosexual condition or activity of the fiance, or about his or her future behavior, a

¹⁹ Cf. Cavanagh, *op. cit.*, Clinic 10, "Marriage and the Homosexual," pp. 135, sqq. an interesting and useful discussion, in part.

²⁰ Cf. Tobin, *op. cit.*, pp. 272-278; Keating, *op. cit.*, pp. 191-192.

²¹ *Op. cit.* p. 306, at n. 6.

²² Cf. can. 1068 and canonical authors on this subject. Concerning unfitness for the matrimonial state as such, the work of Keating and the article of the writer, cited above, may also be profitably consulted.

²³ *Op. cit.* p. 306, at n. 8.

²⁴ Cf. Reg. 79-83, *Regulae Servandae in Processibus super Matr. Rato et Non-Consummato*—AAS, XV (1923) 408.

condition *sine qua non* may be placed and may enter into the psychological act of marriage consent.²⁵

Obviously, in a given case, the psychic condition of the homo-psychosexually inverted subject could present a personality structure burdened by and involved in a complex of interrelated or associated psychopathologic anomalies to produce several of these effects. Thus the same central fact (homosexuality) with its particular concrete, psychically internal, and external circumstances may, in a proper case, be employed as material evidence upon different approaches toward the canonical decision in a matrimonial case. Accordingly, the basic psychosexual anomaly with its specific, and perhaps ramified, operative characteristics, if any, may be productive of a single cause or of several joint causes of canonical action against the state of matrimony.²⁶

The following general observations are in order before considering details. A vast number of questions arise concerning the premises of homosexuality as dealt with in the study of Tobin and the operative effects of its psychosexual inversion. Some of them are dispelled in its explanations; the writer sought elsewhere for more extensive information, penetrating insight, and reflective study as well.²⁷

Homosexuality is a grave problem in the field of sociology and law, and hence also in the area of matrimony. Though in view of different purposes, professional knowledge on this subject is required not only of the psychiatrist and psychologist, but of the jurist also; mutual understanding and cooperation between them are imperative. The purpose of the work of Tobin is to professionally alert and to some extent acquaint the canonical jurist concerning the problems of homosexuality in respect to matrimony. Very many Rotal decisions are cited in his study, and excerpts from them quoted. But it seems that, on the whole, there is no established Rotal jurisprudence in respect to cases presented because of homosexual inversion, which offers many difficulties for the jurist and the psychiatrist. The reason seems to be the fact that variant etiology and the prognosis of the homophilic deviance ultimately depend upon psychic phenomena and the attendant psychodynamics, which are frequently themselves difficult of

²⁵ Op. cit., p. 307, at n. 10; cf. can. 1092.

²⁶ Cf. Tobin, *op. cit.*, Chap. III.

²⁷ Besides the works already cited, cf., e. g., Menninger, K., *The Human Mind* (New York: Garden City Publ. Co. 1930), Kobler, *Casebook in Psychopathology* (New York: Alba House, 1964); VanderVeldt J.-Odenwald, R., *Psychiatry and Catholicism* (2. ed. New York: McGraw-Hill Book Co. 1957); Noyes, A.-Kolb, L. *Modern Clinical Psychiatry* (6. ed. Philadelphia: W. B. Saunders Co. 1963;) cf. Cavanagh, *op. cit.* Clinic 10, "Marriage and the Homosexual," pp. 142-146, considerable literature in relation to the canonical approach; *Perversions—Psychodynamics and Therapy*, ed. Sander Lorand; assoc. ed. M. Balint, (New York: Gramercy Books, 1956); *The Encyclopedia of Mental Health*, A. Deutsch, ed. in chief; H. Fishman, exec. ed. 6 vols. (New York: Franklin Watts, Inc. 1963) [cited *EMH*]. These works provide a vast literature on this subject.

ascertainment and especially of adequate appraisal as to their actual psychic effect in a given case.²⁸ Precisely, the questions arise in view of etiological theories and especially of etiological facts: how, to what extent, to what effect, is the subject found mentally, physiologically, heterosexually to be inadequate or to fail, directly or indirectly, if at all, in establishing the matrimonial state; in fulfilling its demands?²⁹

The study of Tobin reveals in its Chapter II that the juridic evidence of record involving and related to homosexual tendencies predisposed and orientated to this deviance and to its activities, including lesbianism, is as a rule insufficient to support alleged invalidity of marriage on any count,³⁰ even that of psychic impotence.³¹ There are exceptions; understandably, *amentia* (e.g., schizophrenia) arising out of or associated with homosexual orientation and personality appears to be one of them.³² The exception successful to the party in interest of invalidity of the marriage seems only to emphasize the negative rule. Rather, the evidence brought into the proceedings from the factual homosexual symptoms may succeed, if at all, in supporting the allegation of non-consummation, or the petition *in favorem fidei*.³³ Hence, the administrative procedures would appear to be in these cases the more practical and expeditious;³⁴ such appears to have been the practice of the S.C. of the Council before 1908.³⁵ On the other hand, judicial proceedings and investigations into the homosexual condition itself and its pertinent results adverse to matrimony, performed incident to the allegation of nullity on specific counts, are fraught with intricate, wearisome, and time-consuming detail, often resulting in uncertainties.³⁶ Permanence of the homosexual condition is a thorny question, as recognized in psychiatry.³⁷ For the question of cure or adjustment is in itself not simple; it is very problematic. Moreover, should not the resistance of the subject to cure or change be accounted as part and parcel of his disorder

²⁸ Cf., e. g., Ellis, A., *op. cit.*, pp. 51, 54-55.

²⁹ The many possible issues are set forth in Chap. II and III of the work of Tobin.

³⁰ The counts are outlined in Chap. III, pp. 147-148; they should be related to the provisions of can. 1015, §1-3, 1081, 1082, 1068, 1086, 1087, 1092.

³¹ The reason is stated, *op. cit.*, p. 107, n. 5: "The permanent character of psychic impotency, especially in cases of this type, is dubious." The text here means, apparently, psychophysiological impotence, sometimes called functional impotence.

³² Cf. cases related in Tobin, *op. cit.*, pp. 143-144. Such psychiatric phenomena are discussed by Gustav Bychowski, *Homosexuality and Psychosis* in Lorand-Balint, *op. cit.*, p. 97-108, where psychosis appears to arise as a defense against homosexuality. Cf. also Caprio, *Fem. Homosex.*, p. 305. On pp. 27-28, Tobin notes an interpretation different from that of Bychowski; another which is in agreement.

³³ Cf. Tobin, *op. cit.*, pp. 95-108, 141-142.

³⁴ Cf. Hickey, J., "De Processu super Matrimonio Rato et Non Consummato", *THE JURIST*, I (July, 1941) 217.

³⁵ Noted, Tobin, *op. cit.*, p. 95, n. 37, quoting articles by Gerhard Oesterle.

³⁶ Cf. Tobin, *op. cit.*, e.g. p. 99; and the works herein cited.

³⁷ Frequently noted in the work of Tobin, *op. cit.*, Chap. II.

or disturbance—whatever its basic, developed, and perhaps ramified nature and characteristics may be—and of the alleged canonical impediment or source of invalidity? For it is widely recognized that genuine homosexual mentality and orientation are basic elements for the formation of a defense structure and support necessary to maintain some semblance of an integrated personality.³⁸ One may, perhaps, consider the condition and situation wherein and to the effect that the subject, in the milieu of his own thinking and strivings, simply must continue to have his homosexual “fix.”

When any such homosexual marriage situation case, to be investigated in whatever form, has reached the stage of presentation to ecclesiastical authority, the matrimony is most usually in the state of inexorable disaster, to be averted, if at all possible, anteriorly and before the fatal harm has been created. The ensuing procedure is at best a desperate attempt in salvage operation; the damage is already complete, final, and irreparable. Hence³⁹ the writer believes that the condition of homosexual deviance should by canonical legislation be established as a diriment impediment to marriage; scil.: the state of genuine homosexuality, i.e. in characterological and personality predisposition and orientation, past or present, organo-or psychogenic, known (by some called overt) to the subject or unknown (by some called latent), disclosed or undisclosed by him, active or non-active, even with bisexual aspect,⁴⁰ marriage with the unbaptized included. A dispensation should require the employment of psychiatric competence and other appropriate safeguards.

A rapport between medicine and law must be brought into proper focus in respect to the present subject matter; this medical jurisprudence is necessary as a matter of principle.⁴¹ Accordingly, to avoid confusion and inaccuracy, since it has many complex facets,⁴² the factually descriptive concept and exposition of homosexuality is of first importance, and is usefully introduced here.

Essentially, this homosexual inversion is ultimately a development into a psychosexual condition or state; not mere, overt homosexual activity. The latter may be its manifestation. Upon a clinically practical and realistic approach, it is a psychosexual phenomenon and orientation of character and personality structure. It consists in the state, of varying degrees, of deviation of the natural sexual instinct and inclination from its natural sexual object, the other sex, a withdrawal and alienation from

³⁸ Cf. Feldman, S. S., *On Homosexuality* in Lorand-Balint, *op. cit.*, pp. 76, 92-93, Cavanagh, *op. cit.*, p. 229; also frequently seen in Hatterer, *op. cit.*

³⁹ Contrary to what seems to be the position in Tobin, *op. cit.*, p. 278.

⁴⁰ The latent condition may well pose special problems.—Cf. Cavanagh, *op. cit.*, pp. 24, 78-79; Caprio, *Fem. Homosex.*, Chap. XI.

⁴¹ Instructively considered in Tobin, *op. cit.*, Chap. I.

⁴² Cf. Ellis, A., *op. cit.*, p. 19.

heterosexual love (negative element) and of concomitant psychosexual conversion to the same sex (positive element).⁴³ Attention is called to the coexistence of the negative and positive elements; each may be the object of even severe mental disorder and emotional disturbance. It must, in general, be understood that the heterosexual and the homosexual direction or tendency, respectively as such, can coexist, and actually in many cases do so, side by side in equal or in inverse ratio at once in the same character and personality structure; even to apparently exclusive homosexuality or to apparently exclusive heterosexuality, as they are called.⁴⁴ It would appear that the latter may have a so called latent (masked, in some instances conscious) homosexual component, which may affect the orientation and function of the psychosexual personality.⁴⁵ And one should, conversely, expect a latent heterosexual component in homosexuality.⁴⁶ It is clearly indicated that homophilic inversion, overt and active, is a distorted imitation by the subject of his own innate heterosexual orientation and drive.⁴⁷ Thus, as disclosed in the entire literature cited herein, homosexuality represents psychosexual orientation of the personality which is adverse to heterosexuality, respectively in a lesser or greater, predominant or exclusive degree, and is latent (in some cases, conscious) or overt (active), and is accordingly directed to the same sex.

As the work of Tobin also notes, homosexual inversion as thus described is to be regarded, within a psychiatric view, as such as in the sphere of behavioral disorder and as only a symptom;⁴⁸ it is not a clinical or pathological entity.⁴⁹ It is a symptom, but, as it is stated, not a symptom "of a single integrated psychiatric syndrome."⁵⁰ The terminology of this last observation, concerning the "psychiatric syndrome," appears strange; it seems unfortunate at best, if not misleading. A syndrome is "a complexus of symptoms"; the word connotes a concurrence of symptoms "considered as a whole."⁵¹ Homopsychosexual inversion is a syndrome, a developed psychosexual end result. As defined and described above and recog-

⁴³ Cf. e. g. Cavanagh, *Counseling the Invert*, pp. 18, 65, 79, 145. This title is a study resulting from a very wide range of professional source literature in this field.

⁴⁴ Cf. Cavanagh, *op. cit.*, p. 89, presenting the Kinsey Schema or rating Scale of the heterosexual-homosexual continuum; Kinsey *et al.*, *op. cit.*, pp. 468-474.

⁴⁵ Cf. Cavanagh, *op. cit.*, pp. 24, 78-81; Kinsey, *et al.*, *op. cit.*, p. 471; Caprio, *Fem. Homosex.*, pp. 120, 161-162, 163-164; Bieber, *et al.*, pp. 256-257.

⁴⁶ Cf. Feldman, in Lorand-Balint, *op. cit.*, pp. 74-75 and pp. 92-94.

⁴⁷ Feldman, *loc. cit.* The study of Ellis, A., *op. cit.*, would seem throughout to agree with this position. Caprio, *Fem. Homosex.*, p. 299.

⁴⁸ Cavanagh, *op. cit.*, p. 280, quoting Hadden; Tobin, *op. cit.*, pp. 25-26, and notes.

⁴⁹ Cavanagh, *op. cit.*, p. 31, quoting Dr. Clara Thompson; Caprio, *Fem. Homosex.*, pp. 120, 299.

⁵⁰ Cavanagh, *op. cit.*, p. 18, quoting Salzman.

⁵¹ *Taber's Cyclopedic Medical Dictionary*, 7. ed. (Philadelphia, 1958) s. v. syndrome; apparently in accord, Cavanagh-McGoldrick, *op. cit.*, p. 617.

nized as such in psychiatry, it is a psychosexual, characterological, and personality construct consisting uniformly, as stated, of a negative and positive element. It presents, as such, a complex, in its elements intrarelated and integrated psychiatric figure. A behavioral syndrome of genuine homosexuality arises therefore and persists. It is, therefore, fundamentally and essentially important to note that the behavioral syndrome, including its internal psychodynamics, i.e. purposeful strivings—whatever its concrete features may be in a given case—is essentially rooted in the psychosexually inverted character and personality. Genuine homosexuality is not a superficial, merely overt sexual phenomenon, an escapade or adventure, even in the form of ambivalent, i.e. bisexual, commitment of the subject. On the other hand, it is rather the etiological construct of this psychosexual inversion which, as uniformly also recognized in psychiatry, does not present a single, integrated constellation of causes. For it is the position taken in psychiatry that the various single occurrences of homosexuality may as a rule be expected to derive and result, respectively, from etiologically different, widely diverse, and disparate factual causes. Their only common denominator is their behavioral end result, namely the symptoms consisting of homo-psychosexual mentality, character, personality, and direction with their overt expressions, if any—all of which resounds in the sphere of behavioral disorder. On this basis, homosexuality becomes a way of life.

Accordingly, homophilic inversion as a symptom as seen as such in psychiatry is a sign, indication, a “manifestation of a more general personality problem,” “merely one of the symptoms of a character problem . . . character disturbance,”⁵² in a given case, of even deeply-rooted personality disorders and disturbance.⁵³ As such, it signifies different etiological meanings in different personality structures. Like a headache, it results from a large variety of disorders.⁵⁴ And, accordingly, the homophilic deviant is characterized as a psychosexually “disturbed individual,”⁵⁵ whose personality problem involves emotional disturbance in psychosexual immaturity and consequent insecurity;⁵⁶ a condition which presents a distortion of the emotional life,⁵⁷ an indication of “emotional maladjustment.”⁵⁸ So called mental and emotional illness, imbalance (distortion and disturbance), are present,⁵⁹ because of inability to adapt, conform, harmonize the personality with the heterosexual features of the environment. The stage is set for

⁵² Cavanagh, *op. cit.*, p. 37.

⁵³ Noyes-Kolb, *op. cit.*, pp. 466, col. 2, 469, col. 2; accord, Cavanagh, *op. cit.*, pp. 18, 31, 151; Menninger, *Vital Balance*, p. 198; Caprio, *Fem. Homosex.*, p. 299, quoting Clara Thompson.

⁵⁴ Cavanagh, *op. cit.*, p. 31, quoting Clara Thompson.

⁵⁵ Cf. Ellis, A. *op. cit.*, p. 98.

⁵⁶ Caprio, *Fem. Homosex.*, p. 299; Ellis, A., *op. cit.*, p. 80.

⁵⁷ Cavanagh, *op. cit.*, p. 2.

⁵⁸ Caprio, *Fem. Homosex.*, p. 303.

⁵⁹ Cf. Caprio, *Fem. Homosex.*, pp. 285-286, 293.

displacement (substitution) in homosexual indulgence.⁶⁰ The obvious reference here is to psychic conflicts, with attempt at a solution. In its advanced stages of confirmed, exclusive, or near-exclusive homophilism, this symptomatic condition presents the expression of a deviant psychosexual state of personality in the condition of neurosis,⁶¹ or frequently of near-psychosis.⁶² In view of these premises, the writer ventures the conclusion that, morally considered, i.e. in respect of the usual course of human conduct, the confirmed, exclusive or near-exclusive, and committed homo-psychosexual invert is psychologically vis-a-vis heterosexuality invested with a perhaps fatally traumatized or disordered and perhaps emotionally disturbed personality and behavior pattern with its involvements and associations all woven, perhaps morally unalterably, into a way and style of life, completely or partially adverse to the heterosexual rapport. As regards the discussions in this study, the question whether or not, in his state, he is capable of psychologically understanding or tendering-accepting sufficient matrimonial consent (*matrimonium in fieri*) is *per se* irrelevant.

Admittedly, some unjustifiable psychiatric name-calling can enter here. The statements from the literature in psychiatry are general or generalized ones, which may be verified in given cases. But as carefully indicated also by Tobin, and as is abundantly clear in the literature, each case is, in its etiology and especially in its psychodynamics (purposeful direction), unique, and must therefore be carefully investigated and essayed accordingly, in order properly to appraise the significance of its end results in respect to the character of, and especially with attention to the degree, if any, of psychic disorder and disturbance.⁶³ Each human personality is unique—a commonplace today in the behavioral sciences; that of the homosexual deviate is no exception to this principle. It seems that generalizations can be employed only with due caution as presumptively determinative, if at all, of individual cases. Therefore, a practical conclusion seems here emphatically to emerge. It may be very difficult, as noticed by Tobin, to arrive *ex post facto* at a decision which must determine what influence, if any, the alleged homosexual condition had or has, or the subject under its influence had or has, upon the state of matrimony in his case. The fundamental importance of etiology in respect to this subject matter is readily acknowledged,⁶⁴ because a rational explanation of the homosexual condition in each case is rightfully required. It is likewise agreed that the cause or complex of causes must be considered in view of the entire individ-

⁶⁰ Cf. Caprio, *op. cit.*, pp. 266, quoting Dr. W. Beran Wolfe, p. 293; Feldman, "On Homosexuality" in Lorand-Balint, *op. cit.*, pp. 74-75; Devlin, *op. cit.*, p. 101.

⁶¹ Caprio, *op. cit.*, pp. 120, 303-304.

⁶² Ellis, A., *op. cit.*, p. 9; and see his Chap. III, concerning this question at length.

⁶³ This thought seems to course with particular emphasis throughout the study of Menninger, *The Vital Balance*; as well as in Hatterer, *op. cit.*, e.g., p. 2.

⁶⁴ Cf. Tobin, *op. cit.*, Chap. I.

ual personality structure and its history.⁶⁵ In considering etiology, careful distinction must be made between the etiological, causal factors or facts of homosexual inversion and the theories of its genesis, of which latter there are many.⁶⁶ Theories are not etiological facts. The theories endeavor to explain the origin, nature, course, significance of the clinical facts; they are not the facts themselves; they are, as it appears, largely unproved. Each apparently makes a useful contribution,⁶⁷ like the theories in therapy. One such theory or hypothesis is the well-known Freudian theory of the psychosexual development and its aberrations.⁶⁸ There appears to be a complexity not only in factual etiology, but in etiological theory also. The reader is referred to the learned books concerning the theories. The present discussion confines itself to a very brief consideration of etiological factors or facts.⁶⁹

The origin of homosexuality is difficult to explain because of lack of sufficient knowledge; especially there is difficulty in ascertaining the factors or facts which actually contributed to the ultimate condition found in a given case.⁷⁰ It seems correct, first of all, to state that all that is known in general and for certain about homophilism is confined to the features of its overt manifestation. But the peculiar or characteristic psychogenesis, if any, in any given case, must always remain the object of individual, serious etiological and psychodynamic investigation, to determine what factors, causes, influences have contributed to this end result.⁷¹ Psychodynamics deals with the motivated orientation of human behavior. The causative or influencing factors differ in each case.⁷² But here it is necessary to draw other additional distinctions, the elements of which may be in combination in certain cases. Namely, the etiological factors which dispose and direct to homosexual inversion have been attributed to genetic, organic, physiological (hormonal), and psychological factors developed from environmental experiences.⁷³ Here enters the well-known general distinction between—and combination of—“nature and nurture” in the development of the personality.⁷⁴

In respect to these factors, the present preponderant and prevailing

⁶⁵ Cf. Gillespie, W. H., “The Structure and Aetiology of Sexual Perversion” in Lorand-Balint, *op. cit.*, p. 39.

⁶⁶ Cf., e.g., *ESB*, I, 487, col. 2 and 488; Caprio, *Fem. Homosex.*, Chap. IX; Cavanagh, *op. cit.*, pp. 47-53; Bieber *et al.*, *op. cit.*, Chap. I, “Concepts of Male Homosexuality,” p. 3-18.

⁶⁷ Cf. Cavanagh, *op. cit.*, p. 14.

⁶⁸ Cf., e.g., Cavanagh, *op. cit.*, pp. 35-37; Caprio, *Fem. Homosex.*, pp. 110-112.

⁶⁹ Tobin, *op. cit.*, discusses at length the subject of etiology, Chap. I, Section III.

⁷⁰ Cf. Cavanagh, *op. cit.*, p. 39; Ellis, A., *op. cit.*, Chap. I and II.

⁷¹ Cf. Cavanagh, *op. cit.*, p. 60-66—“Proximate Factors.”

⁷² Caprio, *Var. Sex. Behav.*, pp. 89, 90-91.

⁷³ Cavanagh, *op. cit.*, pp. 39-53; in accord, cf. Ellis, A., *op. cit.* pp. 21-50; Bieber *et al.*, *loc. cit.*

⁷⁴ Cf., e.g., Devlin, *op. cit.*, p. 109.

position in the literature of psychiatrists appears to be that homosexuality is not the direct product of genetic or organic, i.e. constitutional, origin. Rather, this sexual inversion is considered as psychological, and acquired psychogenic disorder, in origin, though constitutional factors as capable of offering indirect, predisposing influences are not to be discounted by any means.⁷⁵ In other words, these latter factors may adversely precondition the subject for the successful invasion of psychogenic causes based on adverse environmental circumstances.⁷⁶ Hence, whether or not anatomical, organic, physiological factors are present, it seems that homosexual inversion is viewed as a psychopathological condition⁷⁷ of greater or lesser degree of intensity.⁷⁸ In any case, knowledge of the particular etiological factors, or facts, i.e., those actually contributing to the homosexual condition, are of prime importance for the jurist as well as for the psychiatrist. They are facts basic to a rational explanation and appraisal of the all-important psychodynamics (origin and development of personality structure as motivated and orientated)⁷⁹ of the psychopathologico-sexual state, if any, and hence of motivation in the subject in respect to the matrimonial state in issue. Namely, are these the causes and motivations, if any, underlying homosexuality, and why and how are they of such quality and potency that they explain and support the allegation of invalidity *ab initio* of the marriage undertaking or of its non-consummation?

But endeavoring to marshal the many and complex causes valid and viable in creating the condition of inversion, possibly even in a single case, is truly a bewildering experience. A general, very brief summation seems to serve best in the present discussion. Namely, they are such causes—other than constitutional, if any present—which consist in adverse environmental experiences vested with unfavorable factual and emotional impact, especially occurring in the family circle. Their result is said to disturb and impair the proper development and orientation of hetero-psychosexual balance in personality structure. One point of chief concentration of many such etiological factors is noted in the prolonged, at times severely, untoward, and adverse interpersonal intrafamily relationships and experiences, of sexual and non-sexual connotation, not only of bilat-

⁷⁵ Cf. Ellis, A., *op. cit.*, pp. 21-77; Caprio, *op. cit.*, pp. 289, 302-303; Brombert, W., "Homosexuality" in *EMH*, III, 750-752; Rosenthal, D., "Heredity and Mental Health" in *EMH*, II, *passim*, pp. 724, 729, and esp. 731-732; Cavanagh, *op. cit.*, pp. 20, 39-70, 268; Cavanagh-McGoldrick, *op. cit.*, pp. 552-559; VanderVeldt-Odenwald, *op. cit.*, pp. 51, 424-429; Kobler, *op. cit.*, p. 22; *ESB*, I, 486-487; Bychowski, *op. cit.*, p. 119.

⁷⁶ Cf. Ellis, A., *op. cit.*, pp. 82, 93.

⁷⁷ Cf. Cavanagh, *op. cit.*, p. 44, quoting Dom Thomas V. Moore, O.S.B., at note 27.

⁷⁸ Note this appraisal cast in terms of "psychopathology" as apparently characteristic, psychiatric terminology. Whatever its precise, functional, realistic meaning may be is a question which psychiatry seems not to have answered.

⁷⁹ Cf. VanderVeldt-Odenwald, *op. cit.*, pp. 189-194; Devlin, *op. cit.*, pp. 32-39; Noyes-Kolb, *op. cit.*, pp. 6, sqq.; Caprio, *Var. Sex. Behave.*, p. 90.

eral, but even of trilateral and quadilateral features among family members in respect to attitudes, behavior, speech, indoctrination, explicit or implicit. These factors are portrayed seemingly as converging to foster especially, though not exclusively, rather the negative element of hetero-psychosexual estrangement.⁸⁰

Site of etiological origin, however, and especially of orientation, development, and maintenance of genuine homosexuality is not only the general family milieu or melee; the intrafamilial phenomena may be only their beginning, but in conjunction with extrafamilial relationships and general environment. In this latter environment especially the positive element and direction to the same sex is fostered and developed.⁸¹ Accordingly, in respect to the positive element, the direction to the same sex and its overt implementations in activity, positive indoctrination (including self-indoctrination), the drive to seek homosexual satisfaction, and especially seduction are noted.⁸² It thus begins to become clearly understood that the world and life of genuine psychosexual inversion, with its negative and perhaps hostile attitudes in regard to heterosexuality and its positive strivings and experiences, are matters essentially apart from the normal, reasonably harmonious family scene and, more precisely, from heterosexual marriage and its matrimonial estate. Accordingly, genuine homosexuality is thus seen as the symptomatic climax of disordered or distorted character and personality structure, perhaps also emotionally disturbed, in greater or lesser degree in its response to the human environment. The psychosexual personality is based upon homosexual orientation, direction, and adaptation, and is inverted narcissistically upon the self-interest.⁸³

Homophilism does not develop from a homogeneous pattern of basic causes in either the male or the female.⁸⁴ This merely negative statement, which actually and practically would in itself be a gross understatement, appears to be true in respect to both the positive and more especially the negative element of homosexual inversion. The causative factors which lead to the various conditions of this inversion are not at all the same, i.e. in its general incidence.⁸⁵ They are multiple and complex,⁸⁶ varying widely in different subjects.⁸⁷ Multiplicity of contributing and conspiring factors

⁸⁰ Cf. the work of Bieber *et al.*, *op. cit.*, in this respect, throughout.

⁸¹ Amply confirmed in the combined works of Bieber *et al.*, *op. cit.*, and of Hatterer, *op. cit.*, throughout.

⁸² Cf., e. g., *ESB*, I, 488; Cavanagh, *op. cit.*, pp. 60-70; Caprio, *Fem. Homosex.*, pp. 111-112, 121-122, 192, 206, 209, 218, 221-222, 226, 228-229, 272-273, 277, 292-293, 303-304; Ellis, A., *op. cit.*, p. 55; irrational self-indoctrination is especially noted in this work.

⁸³ Cf., throughout, the combined studies of Cory-LeRoy, *op. cit.*, of Ellis, A. *op. cit.*, of Hatterer, *op. cit.*, e. g., p. 270; and Caprio, *Var. Sex. Behav.*, pp. 92-94.

⁸⁴ Cf. Cavanagh, *op. cit.*, p. 105; Caprio, *Fem. Homosex.*, p. 304.

⁸⁵ Cf. Cavanagh, *op. cit.*, pp. 37, 268, and esp. pp. 60-66.

⁸⁶ Caprio, *op. cit.*, p. 304, and his Chap. X; Ellis, A., *op. cit.*, Chap. II.

⁸⁷ Feldman, *op. cit.*, p. 93.

may be expected to be involved to present a complicated or complex single case.⁸⁸

It is noted especially that predominant or exclusive (fixed, confirmed) homosexual inversion may well be the product of multiple psychogenic causality in a given case.⁸⁹ Granted that such condition of inversion has been verified in a given case, a further question obviously must confront this discussion. Is the condition of such potential as to produce, and if so did it under present juridic (canonical) standards actually effect, an anomaly and aberration adverse to the validity of matrimony contracted or to its consummation? And how many judicial trials, and also, in any event in respect to procedure, how much effort, time, and expense will be consumed definitively to establish the juridic status of this marriage? Regardless of the outcome of this question, the position unanimously maintained, and as generally known by those informed,⁹⁰ is that this condition of homosexuality can be a condition which is adverse to a reasonably humanly satisfactory state of matrimony. Who can accept as essentially valid, genuine, and complete a merely juridically—as precisely stipulated in the terms of the existing Code law—valid marriage, even consummated,⁹¹ but one which is cast as in a mold, in the framework and socio-sexual milieu of a confirmed and fixed homopsychosexual condition which is inherently incapable of sustaining, on an enduring basis at even a minimal level of heterosexual partnership and intercommunion, the matrimonial commitment and consortium embracing the entirety of life? In the name of being realistic, one is forced to ask whether a matrimonial commitment under these premises of fixed sexual inversion in either partner, or in both partners, is really intended by the creative will of God to be included in the male-female relationship—the Judeo-Christian concept of matrimony—as recorded in the complete vision of matrimony in Genesis 1:26-28 combined with Genesis 2: 18-25, and as elaborated according to Ephesians 5: 21-33. These sublime passages are a basis for the theology of matrimony, from which canon law must, it is suggested, derive its concept of the divinely established and ordained substance, and hence of the complete essence, of matrimony. Hence the further question emerges, as to whether canons 1081 and 1082, § 1, substantially and adequately reflect the complete substance and essence of matrimony in the divine intendments disclosed in these passages of Holy Writ. It is here submitted that they do not. Canons 1081 and 1082, § 1, require as the exclusive substance and essence of matrimony that it be established upon a mutual commitment as of right

⁸⁸ Cavanagh, *op. cit.*, p. 280; with accord, Ellis, A., *op. cit.*, pp. 57, sqq.; *ESB*, I, 488; VanderVeldt-Odenwald, *op. cit.*, p. 429.

⁸⁹ Ellis, a., *op. cit.*, pp. 51-54; Caprio, *Fem. Homosex.*, p. 91; *ESB*, I, 488, col. 2.

⁹⁰ Cf. Cavanah, *op. cit.*, pp. 135-146—Clinic 10: "Marriage and the Homosexual;" VanderVeldt-Odenwald, *op. cit.*, p. 434.

⁹¹ Cf. can. 1081, 1082, § 1, 1015, §1-3, 1118.

to the body in natural penile-vaginal penetration together with its conatural insemination. This conclusion is obvious also in the text of canon 1015, § 1.⁹² This valid and ratified (*ratum*) commitment when once consummated is final and humanly irrevocable according to canon 1118. A mutual commitment of the hetero-psychosexual personalities as such to positive loyalty in a marital consortium embracing the entirety of life and living on an enduring basis as essential to matrimony⁹³ does not lie in these texts, that is, as a requirement, considered even at a minimal level of possibility of fulfillment, substantial and essential to valid matrimony. Briefly, there is therein substantially and essentially required and directed merely a commitment of bodies to the right (the *ius in corpus*) of conjugal sexual copulation, not, of personalities as such. These latter are therein irrelevant in respect to establishing the substance and essence of the undertaking, be they ever so incompatible and *ab initio* unfit and incapable of supporting an enduring marital consortium as just detailed. These canonical texts also embrace exclusively the matter and form of the sacrament of matrimony,⁹⁴ which constitutes the basis of symbolism of union of Christ with His Church as His bride.⁹⁵

Indeed, canon 1081, §1, in part enacts in effect that the parties consenting in marriage must be by law capable (*iure habiles*). Capable or qualified by law (*ius*) concerning what, or to do what? The question arises concerning the extent, limitation, terminus of *iure habiles*,⁹⁶ precisely in respect to the matters here under consideration, specifically: the capacity to consummate the matrimonial union; moreover, the capacity of the hetero-psychosexual personality, i.e. behavioral pattern, required to sustain the matrimonial consortium, as stated, and to maintain it from destruction.⁹⁷ Precisely, does the *inter personas iure habiles* of canon 1081,

⁹² Matrimonium baptizatorum validum dicitur ratum, si nondum consummatione completum est; ratum et consummatum, si inter coniuges locum habuerit coniugalis actus, ad quem natura sua ordinatur contractus matrimonialis et quo coniuges fiunt una caro.

⁹³ Cf. Pius. XI, litt. encycl. *Casti connubii*—AAS (1930) 547-549, 553, 571-572, 585.

⁹⁴ Cf. Cappello, F., *Tractatus Canonico-Moralis de Sacramentis*, Vol. V, *De Matrimonio*, 7. ed. accurate emendata et aucta (Marietti, 1961), n. 31. Cf. Cavanagh, *op. cit.*, p. 141—a lamentable case of a homosexual personality, apparently impossible in matrimony.

⁹⁵ Ephesians V: 21, sqq; Cappello, *op. cit.* n. 27.

⁹⁶ Can. 1081, §1: Matrimonium facit partium consensus inter personas iure habiles. The same situation arises under the terms of can. 1035: Omnes possunt matrimonium contrahere, *qui iure non prohibentur* [italics inserted]. Also, under can. 1019, §1.

⁹⁷ Cf. concerning male homosexuality, Hatterer, *op. cit.*, pp. 114-115, 182, 273, 300, 339, 343, 344, 346, 347; female homosexuality, cf. Caprio, *Fem. Homosex.*, pp. vii-viii, xv, 9-10, 11, 297, 302-306, 307; *idem*. *The Modern Woman's Guide to Sexual Maturity* (New York: Grove Press, Inc. First Evergreen Black Cat Ed., 1965), pp. 26-27, 109-110, 203-206; *idem*, *The Sexually Adequate Female*, 19th printing (Greenwich, Conn.: Fawcett Publications, Inc. 1966), pp. 63, 145-161.—Lesbianism, psychologically reducible, as to etiology, to psychosexual inadequacy of lesbian personality as truly female;—analogously parallel to psychosexual inadequacy of male homosexual personality as truly male.

§ 1, include the described fitness or capacity of the *personality* of the subject? The writer believes that it does not. This question will be addressed in a later discussion.

The development of this study has reached proportions which render it incompatible, in view of the general purposes and scope of this periodical, for publication in its entirety in one number. The second section of this title is in complete preparation, and will appear in the immediately subsequent number. It deals with detailed elaboration of the pertinent principles and consideration of cases.