

March 2017

Homosexuality and Validity of Matrimony - A Study in Homo-Psychosexual Inversion

John Rogg Schmidt

Follow this and additional works at: <https://scholarship.law.stjohns.edu/tcl>



Part of the [Catholic Studies Commons](#)

Recommended Citation

John Rogg Schmidt (1973) "Homosexuality and Validity of Matrimony - A Study in Homo-Psychosexual Inversion," *The Catholic Lawyer*. Vol. 19 : No. 3 , Article 2.

Available at: <https://scholarship.law.stjohns.edu/tcl/vol19/iss3/2>

This Article is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in The Catholic Lawyer by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

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

Elaboration of Principles; Consideration of Cases

JOHN ROGG SCHMIDT*

As indicated in the subtitle, this presentation deals with the elaboration of principles pertinent to this topic and its subject matter, and the consideration of cases involving the presence of homosexuality. It is suggested that the reader will have acquainted himself with the discussions proposed in the previous section. Repetition of titles of works already specifically identified by citation has been omitted in this section.

For proper orientation in this study, it is necessary here to state certain operational principles evidenced in the pertinent literature employed therein, with the endeavor to render them unmistakably clear. True or genuine homosexuality impinges upon the structure of the personality (character) and at the same time upon the personality itself in its actual, overt activity. True or genuine homosexuality means or designates a habitual construct or disposition of dynamic, *i. e.*, purposefully oriented, systematic manner of thinking and willing (usually uttered in some overt activity) directed to and resulting in psychosexually inverted orientation to the same sex, to the lesser, greater, or total exclusion of heterosexuality. Accordingly, the pattern of homo-psychosexual life and behavior is less or more adverse to that of hetero-psychosexuality—oil (psychosexual inversion) and water (heteropsychosexuality) do not mix; they tend to be, or are exclusively, mutually repellent. This latter condition may perhaps be achieved with the progress of psychosexual inversion in the course of time and in its activity. Mere overt homosexual activity alone is not the hall-

† This article is reprinted from 32 *THE JURIST* 494 (1972). This is the second section of Father Schmidt's definitive study of homosexuality and marriage. The first section appeared in 19 *CATHOLIC LAWYER* 84 (1973).

* The Catholic University of America.

mark of genuine psychosexual inversion. It is a commonplace in sexological psychiatry that mere homosexual activity is, *faute de mieux*, practiced under conditions and circumstances of segregation of the sexes, notoriously, *e.g.*, in penal confinement.¹ Incidentally, it may be noted, a certain individual can develop genuine psychosexual inversion under these conditions, but this result does not at all necessarily follow. Psychosexual inversion involves an irrational construct or mental disorder in the hierarchy of practical values in respect to purpose and behavior related thereto; it does not necessarily involve emotional disturbance or necessarily a defect of mental competence in regard to the required essence or substance of matrimony. The focus of this study is emphatically directed to the psychosexually inverted personality. In this study, personality is understood—there are various explanations and theories—as the sum total of behavior patterns in view and perforce of which the individual dynamically, *i.e.*, purposefully, responds and reacts to this environment.² The writer believes that this description, if not a definition, is, in view of the literature employed in this study, sufficiently accurate, workable, and applicable in reference to the present subject matter. These concepts with their functional relevance and effect are developed in detail in the following discussions.

Accordingly, this study is directed to the proposition and effect that matrimonial invalidity can be resident in and arise directly and *per se* from the incapacity of the psychosexually inverted personality of the homosexual itself, to positively respond to and to observe, sustain, perform, implement, and fulfill in an enduring manner the essential requirements of the totality of the conjugal heterosexual and interpersonal relationships or any essential part thereof at least on a minimal level; that is, that his personality may be found inherently unfit and incapacitated to do so.³ Hence, the

¹ Cf., *e.g.*, Cavangh, *op. cit.*, pp. 17-18, 20, and 270-272; Caprio, *Fem. Homosex.*, p. 76, sqq.; Cory-LeRoy, *op. cit.*, p. 101; and esp. Hatterer, *op. cit.*, pp. 16-17.

² Cf. Devlin, *op. cit.*, pp. 31-46, 50-51.

³ Cf. literature in the immediately previous footnote: Hatterer and Caprio, on male and female homosexuality; Tobin, *op. cit.*, p. 174. This position concerning incapacity of the homo-psychosexual invert is the same as that enunciated, concerning the psychopathic (sociopathic) personality, by Finnegan, J. T., "The Current Jurisprudence Concerning the Psychopathic Personality," *THE JURIST*, XXVII (1967), 440-453, and the literature there noted; cf. esp. pp. 441-442, 447-449, 451, 452; by Keating, *Mental Impairment*, pp. 192-196, esp. pp. 192-193, 194-196, concerning the sociopath; and pp. 196-200, esp. pp. 198-200, concerning the homosexual; though the writer would question the precision and also the meaning and purpose of some of the terminology employed in these titles. Cf. Tobin, *op. cit.*, pp. 170-173; also Wrenn, L., "Updating the Law on Marriage," *THE JURIST*, XXVII (1967), 271-273, 280; *idem*, "An Outline of a Jurisprudence on Sociopathy," *THE JURIST*, XXVIII (1968), 470-485, esp. pp. 470-471, 479-481; *idem*, *Annulments* (Hartford: Canon Law Society of America, 1970), pp. 38-39; Keating, J., "The *Caput Nullitatis* in Insanity Cases," *THE JURIST*, XXII (1962), pp. 395-396, 399-401, 405, 407-409, 410-411. This incapacity in the male homosexual personality is amply in great detail and at large explained and verified in frequent passages through-

incapacity, if present, is considered as lodged and activated in the personality as such, as being morally incapable of inhibiting his psychosexual condition and activities on the one hand, and on the other of reacting favorably and of actively conforming to the norms substantially required to be fulfilled by his commitment to the conjugal environment, though the subject may be capable of conjugal sexual intercourse in matrimony. Briefly, this psychosexual condition is uttered in a conjugal behavioral incapacity, precisely unfit and unable to maintain the matrimonial heterosexual consortium. The condition is a moral (behaviorial) incapacity; that is, an impotence *sui generis*, an incapacity in performance, analogous to the physical impotence (*impotentia coeundi*) of canon 1068, i.e., the simple absence or failure of a *materia* essential to the performance of the contract or commitment—*nemo dat quod nonpossidet*; that is, the heterosexual conjugal personality is non-existent, or some essential element, phase, or function thereof. The psychological construct of this psychosexually inverted condition does not *per se* proffer an issue of defect of matrimonial consent, from whatever basic cause this defect may be thought to arise;⁴ this issue is *per se* immaterial, *extra rem*, *hors de combat*.⁵ The matrimonial consortium is here intended to signify the *consortium omnis vitae*,⁶ which is the consortium of Genesis 1: 26-28 com-

out the work of Hatterer; cf. *passim*, e.g., pp. 91, 101-116, 123, 177-253, 265-315, 339-387, 398-399, considered cumulatively.

⁴ As in can. 1081, § 2, with can. 1086, § 2, can. 1013, § 2 and can. 1092, § 2; can. 1082, § 1. Cf. Keating, *op. cit.*, pp. 3-4, 37-38, esp. pp. 194-195, 196-200. In accord, Tobin, *op. cit.*, pp. 168-175. The texts and annotations of both of these authors are most instructive concerning the matrimonial status as a whole of the psychopathic homosexual. Cf. Wrenn, *Annulments*, p. 38, who correctly also introduces "the concept of relative moral impotence."

⁵ The extensive works of Hatterer, *op. cit.* or of Caprio, *Fem. Homosex.* throughout their length and breadth do not give evidence or suggestion of anything to the contrary. Likewise, Bieber, *et al.*, *op. cit.* See also Cory-LeRoy, *op. cit.* Instances of even severe psychopathological disorders and emotional disturbances are, of course, observed.

⁶ According to the terms of the definition of matrimony in Roman Law D. (23, 2) 1: *Nuptiae sunt coniunctio maris et feminae et consortium omnis vitae, divini et humani iuris communicatio*, which is referred to explicitly and implicitly in the passages from *Casti Connubii*, annotated *supra*. See also the Institutes of Justinian Inst. (1, 9) 1: *In potestate nostra sunt liberi nostri, quos ex iustis nuptiis procreaverimus. Nuptiae autem sive matrimonium est viri et mulieris coniunctio, individuam consuetudinem vitae continens*, which similarly is reflected in the Decretals of Gregory IX: X, II, 23, 11: . . . *quum matrimonium sit maris et feminae coniunctio, individuam vitae consuetudinem retinens: . . .* In a recent work by Mosiek, *U. Kirchliches Eherecht—Unter Berücksichtigung der Nachkonziliaren Rechtslage*, pp. 23-26, 238-239, the same concept of matrimony is likewise cast, and in accord with the pertinent pronouncements of the Pastoral constitution on the Church in the Modern World (*Gaudium et spes*), in the terms of a *Leibes-und Lebensgemeinschaft* (a communion of body and of living in mutual love). Cf. Schmidt, J. R., "A New Treatise on Matrimonial Canon Law" (A Review Article on this work by Prof. Dr. Ulrich Mosiek), *THE JURIST*, XXXI (1971), 516-518. By way of example, in a much earlier work by Heiner, F., *Grundriss des Katholischen Eherechts*, Fünfte Verbesserte und Vermehrte Auflage (Munster i. W. 1908), pp. 6-7, 12-13, 18-19, matrimony is viewed in the same terms of Roman and canon law, likewise as a *volligen*

bined with Genesis 2: 18-25 and Ephesians 5: 21-33. Accordingly, the writer concludes, at the present time, in view of the literature herein cited, that the fixed or confirmed, or nearly so, homo-psychosexually inverted personality may be found to be, in respect to the matrimonial consortium, sociopathically a narcissistic associate of the sociopath, whose disorder is also in the sphere of behavior; as a psychosexual invert he is sociopathic. To wit: perforce of his disordered, erroneous intellection and intellectual processes, his psychosexually inverted self, exclusively or predominantly self-confined, its interests, and its own particular psychosexually inverted lifestyle are, at all events in his disorderly constructed hierarchy of values, related to and made normative in his sphere of life and living; as such paramount to all else and specifically preferred—if indeed this specific order of preference and precedence is construed at all—to the totality of the matrimonial heterosexual way of life and living, or to any essential part thereof.⁷ Accordingly, in respect to the matrimonial relationship, the psy-

Lebensgemeinschaft (complete communion of life and living) in true, reciprocal, cooperative love, which by divine ordinance pertains to the essence of matrimony. In his text, it is abundantly clear that the author obviously sees (pp. 18-19), on the basis of sacred scripture, in the matrimonial relationship the *consortium omnis vitae* as belonging to the essence, nature, substance, and inherent purpose of matrimony.

⁷ Cf. in respect to the male homosexual, the immediately previously annotated passages in Hatterer, *op. cit.*, *supra*. Concerning a brief discussion of the ideological construct of value judgments of the sociopathic personality, exactly pertinent, referable, and applicable here in its terms to that of this psychosexual invert, see Schmidt, J. R., "Mental Impairment and Marriage"/A Review Article, *THE JURIST*, XXV (1965), 480-483; cf. Wrenn, *Annulments*, pp. 32-34; Hatterer, *op. cit.*, pp. 398-399, 410, 442. This sociopathic, psychosexual condition in its construct considered in its entirety involves and presents a psychosexually generated characterological disorder, precisely an inversion to the self and sexual self-interest and consequent sexual and social behavioral disorder, psychic and overt, respectively. It appears to originate, proximately, in the above-described psychopathic disorder resulting, perforce of this disorder and distortion (psychopathic) of values, in a psychopathic characterological state. Accordingly, there ensues the psychopathic sociosexual personality in regard to heterosexual behavioral incapacity—a homosexual sociopath. In these respects, the condition appears to bear a strong analogy to nymphomania. *Inter alia*, the behavior in both instances ensues from the psychopathic, socio-sexually disordered character and personality in response to the psychically contrived outlook upon life and living, which it affects and may destructively affect. More specifically and precisely, this orientation originates in a psychopathy which is uttered in a behavioral disorder adverse to the substance of matrimony.—Cf. Keating, *op. cit.*, esp. pp. 158-160, 198; also pp. 4, 37, 159, 161, 162, 163, 164, 192-195; Tobin, *op. cit.*, pp. 170-173, 174-175; with Hatterer, *op. cit.*, pp. 325-330, and 393, sqq., esp. pp. 398-403, 404-405, 410, 440; Ellis, A., Ph.D.-Sagarin, E. *Nymphomania—A Study of the Oversexed Woman* (New York: Grammercy Publ. Co., 1964), e.g., p. 74-85—an interesting situation of male homosexual-nymphomaniac marriage; also pp. 133-138, 191-194. Character is the psychic phenomenon in personality, which embraces the practical principles or norms, determining factors, of actual life and living, scil. of behavior, conduct. Hence, character is the repository of the hierarchy of preferential values of the individual, which direct his practical striving and endeavor. Behavior (action) ensues by agency of the personality. In other words, personality is character in action, in respect and in response to its environment. Character is ascertained from review of activities and their actual results, protracted over an extended

chosexually inverted homosexual is sociopathic precisely to the extent, qualitatively and quantitatively, to which he is non-amenable to, because incapable of conforming to, supporting, maintaining, and fulfilling the essentially required rationally purposeful norms of societal heterosexual rapport or any of them in matrimony, or the same practiced heterosexually outside thereof, or in regard to both.⁸

This description, it is to be noted, can hardly be applied as such to the lesbian and lesbianism in general, with the exception of the "hard-core" mannish female homosexual,⁹ for the following reasons. Lesbianism with its ramifications, or perhaps with its complex facets of various dispositions in various subjects or even perchance in the same subject, appears certainly to be a genre of psychosexual inversion decidedly more complex and varied than is found in the male. The lesbian presents a wider margin of, for lack of other term, sociosexual selectivity.¹⁰ Different characterological types of lesbians are noted.¹¹ This difference in type appears to consist in the basic, different characterological constructs in regard to hierarchy of values concerning the object, quality, and extent of striving in the way of life.¹² But beyond all else, the lesbian is the bearer of and may well be confronted with the deep-seated instinct of human mother-

period of time and seen in a pertinent and integrated entirety and in the entire behavior pattern.—Cf. Alles, R., M.D. *The Psychology of Character*, transl. with Introduction by E. B. Straus, M.A., M.D. (Oxon.), M.R.C.P. (Lond.), (New York, 1938), pp. 7-9, 46-50, which compare with Hatterer, *op. cit.*, pp. 184-185, 398-399; *Encyclopedia of Psychoanalysis*, editor-in-chief Ludwig Eidelberg, M.D. (New York: The Free Press, 1968), *s.v.* Character Neurosis; Character Traits. And cf. Hatterer, *op. cit.*, p. 15, quoting Dr. Samuel B. Hadden, concerning the disordered and disorganized personality of the homosexual.

⁸ Cf. Keating, J. "Sociopathic Personality," *THE JURIST*, XXV (1965), 429-438, esp. 432-438; *idem*, "Marriage of the Psychopathic Personality," *Chicago Studies* (Fall, 1964), 19-38, esp. 26-38; *idem*, in *Insight—Quarterly Review of Religion and Mental Health*, Vol. 3, no. 1 (Summer, 1964), 1-9; Schmidt, J. (rev. art.), *loc. cit.*, *supra.*; Finnegan, J. (art. cited), *THE JURIST*, XXVII (1967), 440-453.

⁹ Cf. Cavanagh, *op. cit.*, pp. 119, 140-141; Caprio, *Sex Adeg. Fem.*, pp. 147, 148-149; *idem*, *Fem. Homosex.*, pp. 4, 8, 11, 13-14, 168-169, 180-181, 304, 305; *idem*, *Var. Sex. Behav.*, pp. 164-165; Cory-LeRoy, *op. cit.*, pp. 159-160.

¹⁰ Cf. Cory-LeRoy, *op. cit.*, pp. 162-163, 166-167; Caprio, *Sex Adeg. Fem.*, pp. 149-150.

¹¹ Principally, the "mannish" and the "feminine" types.—Cf. Caprio, *Fem. Homosex.*, pp. 170, sqq., which compare with pp. 14, 15-19, and see also pp. 7-12, 114-120, 180; *idem*, *Var. Sex. Behav.*, pp. 160-166; Cory-LeRoy, *op. cit.*, p. 160.

¹² Cf. Caprio, *Fem. Homosex.*, pp. 170-171, 173-174, 180-181, 184, and see also pp. viii, xvi, 7-8, 9-10, 11, 12, 304-305, 307; *idem*, *Var. Sex. Behav.*, pp. 160-161, 165; Cory-LeRoy, *op. cit.*, pp. 160, 163-164, 225. It is known generally that, as a rule, the female heterosexual interests in a mutual relationship and in sexual intercourse are much more demanding and selective than they are in the case of the male. The female is directed to and approaches the love object by the entirety of his person and personality, not only via the *membrum virile*, as it is often the situation in the instance of the male.—Cf. Lenz, L. L., Dr., *The Memoirs of a Sexologist—Discretion and Indiscretion*, (New York, 1954), p. 379. There is no reason to believe that the female in the lesbian relationship is any different.—Cf. Caprio, *Fem. Homosex.*, pp. 7, 8, 10, 11-12, 180, 181.

hood and family and all that these unitarily involve; the male is on the periphery of this sphere, from which he can free himself to indulge his interest in other forms of sexuality.¹³ These considerations suggest a basic flexibility or capability of adjustment in character structure in favor of family life with its attraction of security and of satisfaction in the functions of motherhood,¹⁴ all of which, however, can in the lesbian mentality and character orientation undergo a distortion in the "husband-wife" liaison of two lesbians or in their "mother-child" relationship.¹⁵

The term *inter personas iure habiles* of canon 1081, § 1, in regard to the question of personal capacity in matrimony—aside from other disqualifying conditions not pertinent here—has reference to consummation under the terms of canon 1068 on the impediment of impotence to be understood exclusively in terms of canon 1081, § 2, i.e., the capacity to effect conjugal sexual intercourse. In this sense, canon 1081, § 2, has, apparently, exclusively encased as it were in a vacuum the essence of matrimony; that is, without reference to, and to the exclusion from the question of the essence of matrimony,¹⁶ the capacity of the personalities of

¹³ Cf. Cory-LeRoy, *op. cit.*, p. 158; Caprio, *Var. Sex. Behav.*, p. 161; *idem*, *Sex. Adeq. Fem.*, pp. 146-147; *idem*, *Fem. Homosex.*, pp. 304-305.

¹⁴ Cavanagh, *op. cit.*, pp. 119, 120, 140-141.

¹⁵ Cf. Caprio, *Fem. Homosex.*, *passim*, e.g., pp. 8-10, 11, 12, 180-184 and authorities there cited, and pp. 304-305.

¹⁶ Thus Gasparri, P., *Tractatus Canonicus de Matrimonio*, ed. nova ad mentem Codicis I.C. (Typis Polyglottis Vaticanis, 1932), Vol. I, nn. 6, 7, 8; Vol. II, nn. 776, 1105. The same doctrine in practically the same language verbatim is contained in *op. cit.*, 3. ed. Parisiis, 1904, Vol. I, nn. 6-8; Vol. II, nn. 872-873, 1312, and cf. also nn. 1013, 1288. Cf. Schmidt, J. R., "A New Treatise on Matrimonial Canon Law" (A Review Article on the work *Kirchliches Eherecht* by Prof. Dr. Ulrich Mosiek), *THE JURIST*, XXXI (1971), 515-521. Likewise, cf. Cappello, *op. cit.*, nn. 2-3, 6, 7, 8, 9, 571, 574, 574 bis, 737, and n.30-31. Both Gasparri and Cappello restrict the essence of matrimony to the terms of can. 1081, § 2. Cappello, e.g. states, n. 574 bis: "Obiectum consensus matrimonialis in specie consideratum.—Obiectum matrimonialis consensus est ius in corpus compartis, ius tamen non absolutum et illimitatum, sed limitatum ad corpus, et quidem in quantum corpus inservit ex naturae destinatione ad prolis generationem, et non ad alios actus praeter istam generationem; quo sub respectu praedictum ius limitatur ad hominis activitatem in usu corporis, quae probe distinguitur a naturae activitate." This position is an obvious and exclusive reflection of can. 1081, § 2. For at n. 574, the same author speaks of *Natura consensus matrimonialis* and in response quotes can. 1081, § 2. He then, at p. 500, states: "Communio vitae seu tori, mensae et habitationis pertinet ad integritatem, non autem ad essentiam matrimonii, ita ut nuptiae valeant, salvo tamen iure praedicto in corpus, etsi haec vita communis per pactum exclusae feurit." (To which his note 2 cites prominent authorities including Gasparri, presumably to indicate that he has presented at least the prevailing position.) Cf., likewise, n. 737, p. 665, 3. Which compare in contrast with Tobin, *op. cit.*, e.g., pp. 149-153, 155, 168-175, 305-306. The previous position (represented by Gasparri and Cappello), explicitly in its terms is concentrated upon and restricts the essence of matrimony exclusively to the naked *ius in corpus* of can. 1081, § 2; it obviously disallows any other consideration, i.e., the heterosexual *communio vitae* beyond the *ius in corpus* itself, as pertaining to the essence of matrimony. The latter position (Tobin, *loc. cit.*, esp. pp. 168-175), introduces, *inter alia*, as a matter of jurisprudence, the element

either or both of the partners to substantially sustain and to implement the matrimonial relationship, partnership and consortium, on a dynamic, i.e., purposeful, and enduring basis on at least a minimal level of positive, harmonious cooperation and coexistence. In respect to this latter consideration, it is submitted, the Code of Canon Law appears inadequate, if not essentially deficient,¹⁷ concerning the exposition of the complete essence of matrimony,¹⁸ and precisely in respect to the concomitant issue of invalidity in a given case.¹⁹ In other words, the terms of canon 1081, § 2, as well as those of canon 1082, § 1, and of canon 1015, § 1, segregate and isolate as a matter of exclusive essence the two-in-one flesh of matrimony from the equally essential framework of conjugal heterosexual companionship into which the Creator has placed conjugal sexual intercourse. This legal position forecloses entirely, on the question of matrimonial essence, the consideration of the capacity of the conjugal heterosexual personalities and their mutual interrelation to any matter beyond their activity in conjugal copulation, to the right of which the essence of matrimony is thus isolated and limited. These two elements of positive conjugal companionship and conjugal sexual intercourse are obviously and necessarily to be considered as established in original and genuine state of essential continuity and reciprocity. The Divine Mind has invented and established the sexual intercourse of conjugal relationship in the context of reciprocal help-mate in respect to the entirety of life and living.²⁰ The genuine, confirmed homosexual mentality and behavior, the personality, is not directed to the hetero-

of moral, i.e., behavioral, impotence, a "personal incapacity," and suggests the extension of the substance of matrimony to the totality of the conjugal interpersonal relationship (see esp. p. 174), which would be the *consortium omnis vitae*. The previous position obviously disallows any essential marital right to matrimonial heterosexual companionship, beyond the mere *ius in corpus* specified in can. 1081, § 2.

¹⁷ As would appear positively indicated in Keating, *Mental Impairment*, comparing pp. 85 and 164 with p. 192; and in Tobin, *op. cit.*, p. 277-278.

¹⁸ A juridically formal definition of matrimony in accord with its Judeo-Christian concept seems to be required. Yet it is noted *passim* in the canonical literature cited herein, either explicitly or implicitly or in regard to judicial fact situations, that the Code of Canon Law does not offer such a definition. Cf., e.g., Mosiek, *op. cit.*, pp. 24-25; Keating, *op. cit.*, pp. 118, 123. The writer is of the opinion, here submitted, that the definition of matrimony from Roman law in the *Corpus Juris Canonici*, X, II, 23, 11 (both quoted *supra*) is, perforce of the rules of inclusion and interpretation of can. 6 of the Code, juridically viable in the Code of Canon Law. Thus, see can. 6, § 2, and can. 1081, § 1.

¹⁹ As apparently pertinent to these considerations may be indicated the general provisions of canons 1679-1680, § 1 ("... cum in eo deficiunt quae actum ipsum essentialiter constituunt . . ."), and can. 1682.—*De actionibus ob nullitatem actorum*. These provisions appear to be pertinent to the present subject matter.—Cf. Lega, M. Card., *Commentarius in Iudicia Ecclesiastica*—Iuxta CIC, curante V. Bartocetti (Romae, 1938), Vol. I, 411, n. 2-3. They can conceivably be properly and favorably brought into juxtaposition with the term *inter personas iure habiles* of can. 1081, § 1, in respect to matrimony invalid because of substantial moral incapacity in the personality, just as in the obvious case of can. 1068. Cf. also can. 20.

²⁰ Cf. Paulus VI, litt. encycl. *Humanae Vitae*—AAS, LX (1968), 488, n. 12.

sexual utterance and giving of self in the promotion of cooperative, undivided and unitary conjugal venture in the human way of life and living. It is, rather, engrossed in the selfish "on-the-make" for itself and seeks the "help-yourself" to its own purpose and advantage. This personality is one-dimensionally and unilaterally self-centered, and oriented to homosexuality, away from heterosexuality.²¹ Explanation is in order here concerning psychosexual inversion as a possible adverse condition of personality directly invalidating matrimony. This exposé proceeds by way of contrast, but also with some element of similarity in the adverse behavioral result of homosexuality.

Nymphomania has been recognized as a sexually sociopathic condition, in its practice substantially adverse to the state of matrimony, as *per se* contrary to the essential requirement of negative fidelity (Thou shalt not commit adultery). In other words, the source of invalidity, if present, is precisely the incapacity to sustain and implement, fulfill, the negative requirement of fidelity; simulation or other defect of consent is not *per se* in issue.²² In a reported case of nymphomania, the judgment of the Rota was against invalidity. However, the decision of the tribunal, apparently in the manner of *obiter dictum*, not in the *ratio decidendi*, recognized this condition as what may be termed a behavioral incapacity in the personality, which, if grave and incurable, would invalidate matrimony, since the nymphomaniac is incapable of maintaining the *usus exclusivus corporis* in matrimony.²³ The decisive element of invalidity apparently does in such case not lie either in canon 1081, § 2, or in canon 1086, § 2. Positive mental exclusion of right is not contemplated. The moment of invalidity is the adverse behavioral condition of incapacity, which is an analogue of physical impotence of canon 1068. Thus nymphomania as such appears *per se* and *a priori* as unilaterally and specifically directed against negative fidelity on the behavioral level—the nymphomaniac is burdened with the inability to confine her sexual intercourse to the matrimonial bed. These considerations seem to terminate whatever similarity may appear to exist between nymphomania and homosexuality. For in contrast, no such specificity can be expected in regard to the sexually sociopathic condition of psychosexual inversion of the homosexual. This condition in general is not only in its characterological structure complex, but multidimensional in its behavioral pattern and in its result manifested in its personality.²⁴ In the male, psychosexual inversion is a psychopathological "cancer" or "alcohol-

²¹ As is amply clear in the expositions throughout the work (*op. cit.*) of Hatterer.

²² Cf. Keating, *Mental Impairment*, pp. 158-164 and 194-196.

²³ Keating, *op. cit.*, pp. 158-160; *idem*, "The *Caput Nullitatis* in Insanity Cases," *THE JURIST*, XXII (1962), 391-411, esp. 406-411.

²⁴ Cf. Hatterer, *op. cit.*, pp. ix, 2, and, e.g., pp. 398-414, concerning the male; Caprio, *Fem. Homosex.*, e.g., pp. 7-12, 14-22, 170-179, 180-184, concerning the female. These attributive descriptions course through these volumes *passim* with greater or lesser emphasis and detail.

ism," which infects and impairs and may destroy the organization of the entire personality, in respect to rationally purposeful living and achievement and interpersonal rapport, and hence also the possibility of a harmonious or compatible matrimonial commitment and partnership. It can obviously involve the entire personality.²⁵ As noted in the foregoing, with the exception of the "hard-core" mannish lesbian, the same general appraisal cannot, without modification, be attributed to the female homosexual.²⁶ Yet regardless, homosexuality in general in its advanced stages and especially in its overt activity must be viewed not as specifically unilateral, but as multilateral or multidimensional in regard to its impairment of the matrimonial consortium and precisely in respect to its direct relation to the question or issue of its nullity, i.e., the direct impairment of its substance on the behavioral level of the sexually sociopathic personality.²⁷ With the exception of, and in contrast to, the specific charge of behavioral violation of negative fidelity (adultery) in practice, i.e., precisely, behavioral incapacity in its observance (nymphomania), sociopathic psychosexual inversion as such in its behavioral aspects of the personality may in general be found to be directed adversely and directly against, and incapable and destructive of, any or all of the substantially essential elements of matrimony canonically accepted as prospective *capita* of nullity.²⁸ It may tender the obvious issue of so-called functional or psychic impotence (can. 1068);²⁹ or incapacity against permanence.³⁰ The homosexual condition and personality may conceivably also exclude, because of incapacity on the behavioral level, what the writer has elected to call positive conjugal fidelity, the *castitatis fides*, in its complete sense and operative effect, por-

²⁵ Cf. Hatterer, *op. cit.*, p. 1 with footnote, pp. 182-185 with pp. 138-139; and p. 339 with pp. 283, 300, 330, 334, 336, 337, 338, 343, 344, 347, 372-373; and many other places in this work, *passim*.

²⁶ It appears that comparatively little work and information are available specifically concerning lesbianism in the field of psychiatry.—Caprio, *Fem. Homosex.*, pp. vii-viii; Cavanagh, *op. cit.*, pp. 102, and esp. p. 120, regarding matrimony.

²⁷ Cf. precisely Keating, *Mental Impairment*, pp. 196-200, concerning only the substantial elements of matrimony, not the manner of their exclusion or impairment by defect of consent; see esp. pp. 199-200, the "horror copulae" and the "horror feminae"—such condition, if present, must obviously be viewed not only in respect to copulation itself, but in regard to its effect upon the entire matrimonial relationship. Cf. also pp. 194-196.

²⁸ Cf. can. 1081, § 2, 1082, § 1, 1015, § 1 with can. 1068, and the material elements of can. 1086, § 2. A case in point upon the behavioral basis of a lesbian appears to be one reported in Tobin, *op. cit.*, pp. 117-120, but tried on issues of defect of consent. Accordingly, the actual effect of the lesbian mentality and activity upon the viability of the matrimony as a whole was not placed in issue. Similarly, case of mannish lesbian, *op. cit.*, pp. 120-125.

²⁹ Cf. Tobin, *op. cit.*, pp. 88-107—cases; and p. 121, note 95—concise excerpt from decision of the Rota; Keating, *op. cit.*, p. 199 (*horror copulae*); Cavanagh, *op. cit.*, pp. 57-60—fear of genitalia.

³⁰ Cf. Keating, *op. cit.*, pp. 199-200 (*horror feminae*); Cavanagh, *op. cit.*, p. 141—a very arresting case of a male homosexual.

trayed at length in the encyclical *Casti Connubii* as pervading the entire conjugal life and living under its origin, precepts, and guidance of conjugal love operative in the actual conjugal rapport between husband and wife for the mutual development and enhancement of their personalities in temporal and spiritual life.³¹ This result to be attained in the matrimonial relationship is explicitly designated in this document as in a very true sense primary cause of matrimony considered in its broad sense as a communion of the entirety of life, a mutually cooperative way of life and living.³² Here is the *consortium omnis vitae*.³³ This consortium the homo-psychosexual invert may be found to have in effect rejected, not indeed by exclusion through any defect of consent, but rather by the exclusion, in substantially adverse conduct, of the *matrimonium ipsum totum* or of substantially any essential part thereof, as the object of his behavioral withdrawal and alienation therefrom. His behavior would substantially contradict his consensual commitment.

³¹ The mutual domestic and familial way of life must be sustained by conjugal chastity, so that true mutual conjugal loyalty may prevail. The encyclical states: "Quin et mutua inter ipsos conjuges familiaris consuetudo, ut bonum fidei debito splendeat nitore, nota castitatis insigniri debet, . . ." Mutually loyal conjugal chastity is directed by mutual love. The encyclical states: "Haec autem, quae a Sancto Augustino aptissime appellatur castitatis fides, et facilior et multo etiam iucundior ac nobilior efflorescet ex altero capite praestantissimo: ex coniugali scilicet amore, qui omnia coniugalis vitae officia pervadit et quemdam tenet in christiano coniugio principatum nobilitatis. 'Postulat praeterea matrimonii fides ut vir et uxor singulari quodam sanctoque ac puro amore coniuncti sint; neque ut adulteri inter se ament, sed ut Christus dilexit Ecclesiam; hanc enim regulam Apostolus praescipuit, cum ait: Viri, diligite uxores vestras sicut et Christus dilexit Ecclesiam; . . .'" The immediately subsequent context develops the meaning and significance of true and total mutual conjugal love in the totality of the matrimonial relationship. It shows the relationship of husband and wife as at once sacral, conjugal, and hetero-psychosexual in the fullest and complete sense directed toward the mutual enhancement of their personalities before God and man as a matter of inherent finality of their matrimonial relationship. The encyclical states: "Haec mutua coniugum interior conformatio, hoc assiduum sese invicem perficiendi studium, verissima quadam ratione, ut docet Catechismus Romanus, etiam primaria matrimonii causa et ratio dici potest, si tamen matrimonium non pressius ut institutum ad prolem rite procreandam educandamque, sed latius ut totius vitae communio, consuetudo, societas accipiatur.

"Cum hac eadem caritate reliqua coniugii tam iura quam officia compantur necesse est; ita ut non solum iustitiae lex, sed etiam caritatis norma sit illud Apostoli: 'Uxori vir debitum reddat; similiter autem et uxor viro.'" —AAS, XXII (1930), 547-549. See facts in cases in Tobin, *op. cit.*, pp. 108-116, but on the issue of defect of consent.

³² See text in immediately previous footnote.

³³ The objectively analytic, detailed, detached, and concise manner of exposition embodied in the texts of the above reference to *Casti Connubii* indicates clearly that they are not merely hortatory and speculative. It demonstrates that the described rapport between husband and wife and their predetermined mutual conduct, with its unmistakably explicit purpose, must be accepted as essentially inherent in the divinely established matrimonial commitment as such, and understood as embraced in its clearly expressed broad connotation and significance. Hence also the broad connotation of the matrimonial commitment is not to be understood as an improper connotation of matrimony, but as the expression of its broad, all-embracing, substantially inherent scope.

In view of the pertinent facts, clinical and non-clinical, presented in the literature employed throughout this entire study, there is nothing to indicate that even the confirmed, or obligatory, fixed, morally irreversible, perhaps usually overt, homosexual personality cannot *per se*, unless it is sufficiently mentally disturbed or deficient, meet, at least on a minimal level, the requirements of the canonical matrimonial texts of the Code for the validity of marriage, even though incapable to any essential degree of supporting and maintaining on an enduring basis the heterosexual matrimonial consortium as a whole. Moreover, the marital right (*ius in corpus*) having been mutually conveyed (can. 1081, § 2), one act of conjugal intercourse alone between baptized persons (can. 1015, § 1), regardless of matrimonial aftermath, renders their matrimonial estate conclusive and irreversible³⁴ regardless of the advanced degree of psychosexual inversion of the homosexual partner, whose personality is adverse to matrimony.³⁵ To the contrary, matrimony demands a continuing mutual heterosexual relationship which is specifically sexual and as such not grossly fragmentary. Accordingly, heterohomosexual matrimony can be expected to fail.³⁶ Though such a psychosexually inverted personality may not be expected to enter heterosexual marriage, the incident does occur. And it is a commonplace recognized in the literature that it can affect heterosexual copulation in the presence and incitement of homosexual fantasy or imagery.³⁷

The proposition that such a homosexual personality can meet the respective canonical matrimonial requirements in accord with the Code for the validity of the marriage receives at least some substantial support in certain decisions of the Roman tribunals as reported in the work of Tobin. It must be specifically and distinctly understood that these decisions are directed exclusively to the issues of either the impediment of impotence as in canon 1068 under the terms of canon 1015, § 1, and canon 1081, § 2, conjugal heterosexual copulation, or non-consummation. And for the purpose of the present discussion, the progressive sequence of factual issues is: the presence of homosexuality; the condition of impotence; the question of non-consummation; the destruction of the matrimonial consortium.³⁸ The immediate discussions to follow will be directed to decisions given at the Roman Rota.³⁹

Accordingly, all of the decisions at the Rota found precisely, in the

³⁴ Can. 1118.

³⁵ Cf. Cavanagh, *op. cit.*, p. 141—a case in point.

³⁶ Trimbos, C. J., *Healthy/Attitudes towards Love and Sex*, transl. E. Fitzgerald (New York: Kennedy & Sons, 1964), p. 198; Cavanagh, *op. cit.*, p. 135; Hatterer, *op. cit.*, pp. 343, 344, 377.

³⁷ Cavanagh, *op. cit.*, pp. 135-136; Hatterer, *op. cit.*, pp. 104, 187, 266, n. 7, 266-267, 272, 294, 304, 333; Tobin, *op. cit.*, p. 202.

³⁸ Tobin, *op. cit.*, pp. 95-107.

³⁹ Tobin, *op. cit.*, pp. 98-107.

presence of male psychosexual inversion—to whatever extent it may have, respectively, existed qualitatively and quantitatively—that the homosexual invert was not permanently incapable of consummating the marriage; that apparently the psychosexual inversion, in respect to consummation itself, resulted at most in a transient impotence adversely interfering therewith—although not successfully in one case; that, except in one case, the marriage actually remained not consummated; that the matrimonial consortium failed definitively.

These six judicial causes involving male homosexuals were investigated on the issue of so-called psychic impotence (can. 1068).⁴⁰ This anomaly the writer prefers to specifically designate, in reference to these cases and the issues stated, as psychosomatic impotence, because this term is more specifically and precisely descriptive of the psychosexual phenomenon involved and because the term itself is, considered in its factual and actual milieu of psychosexual inversion, psychologically most significant in respect to its adverse effect upon the conjugal hetero-psychosexual interpersonal relationship and activity in general, and in conjugal sexual intercourse itself. It is also referred to by the general, vague, and indefinite term (which the writer considers unsatisfactory) of functional (psychosomatic? somatopsychic? or neither, but purely psychic or moral? or physiological?) impotence. (Attention is called to the footnote inserted to avoid textual digression.)⁴¹

⁴⁰ Cf. Tobin, *op. cit.*, p. 101.

⁴¹ The term "functional"—the writer is fully aware that the term is used by some to have a more or less specific meaning; (but see *Taber's Cyclopedic Medical Dictionary* [7. ed. 1958] *s.v. functional*)—can clearly denote any specific psychic or physiological process from point of specific, fundamental, causal origin to specific, psychological effect or any other specific result. Concerning functional impotence, cf., e.g., *S. R. Rotae Decisiones*, XXXII (1940), Dec. XV, 142-143, n. 3. "Iuxta doctrinam hodie receptam, impotentia distinguitur in instrumentalem et in functionalem, Illa, quae organica quoque vel anatomica dicitur, . . . haec vero, dicta quoque pro variis suis causis psychica, nervosa, neurasthenia sexualis, non tribuitur laesioni organi seu corporis, hucusque cognitae arte medica, sed pendet vel e nervorum debilitate, quae saepe cum aliis morbis cohaeret, vel e causis psychologicis, atque afficit veneream ipsam functionem, quae exhauritur aut varie perturbatur, puta quoad excitationem, quoad erectionem, aut quoad seminationem, relative ad illam de qua agitur mulierem, aut absolute ad omnes. n. 4. In causis autem impotentiae functionalis sunt vitia venera, inter quae sodomia. In specie quod ad ignominiae passionem attinet, qua quis ad eundem accedit sexum, . . . Ut autem in foro externo quoad impotentiam recte quaerantur perversiones appetitus sexualis et inversio de qua in praesenti casu agitur, . . . Enimvero penes istos qui in masculos turpitudinem operantur, . . . aversatio et repugnantia ab altero sexu; quae si accadat, non necessario secumfert incapacitatem plenam aut perpetuam ponendi copulam et problem suscipiendi . . .". And see *ibid.*, n. 3, *In iure*, where can. 1015, § 1, and 1068, § 1, are cited as law in the case. Functional, i.e., psychic, impotence seems to be, in general though not necessarily, the end result of a psychosomatic or somatopsychic process and phenomenon. In the case of true male homosexuality, psychic impotence appears to be usually the end result of a psychosomatic process and phenomenon (though it could remain

a purely psychic obstruction, e.g., *horror feminae*), and is inherently part of the developed psychosexually inverted personality. Cf. Cavanagh-McGoldrick, *op. cit.*, pp. 446-447, 545-548, 558. Vaginism appears to be either a psychosomatic or a somatopsychic disorder. Cf. Frattin, P., *The Matrimonial Impediment of Impotence: Occlusion of Spermatic Ducts and Vaginismus*, Canon Law Studies, n. 381 (Washington, D.C.: The Catholic University of America Press, 1958), pp. 98-102; Caprio, *Sex. Adeg. Fem.*, pp. 71-72. Functional, i.e., psychic (here specifically, moral), impotence seems certainly to be involved in, e.g., the psychopathic (sociopathic) personality, though, at least *per se*, it is clearly not the result of a psychosomatic or somatopsychic process. Cf. Keating, *Mental Impairment*, pp. 179, 183-196; *idem*, "Marriage of the Psychopathic Personality," *Chicago Studies* (Fall, 1964), pp. 26-30, 31-32, 34-36; *idem*, in *Insight*, Quarterly Review of Religion and Mental Health, Vol. 3, n. 1 (Summer, 1964), pp. 1-9; Schmidt, J. R. "Mental Impairment and Marriage"—A Review Article, *THE JURIST*, XXV (1965), 480-483. Nymphomania is also a type of moral, i.e., behavioral impotence, a behavioral disorder, a sexual psychopathy. Cf. Keating, *op. cit.*, pp. 4, 23, 158-160, 161, 162, 163, 194, 200; *idem*, "The *Caput Nullitatis* in Insanity Cases," *THE JURIST*, XXII (1962), 394-396. This psychic phenomenon appears to be the end result of a variable of either somatopsychic or psychosomatic or apparently also of a purely psychic process and disorder. Cf. Ellis-Sagarin, *op. cit.*, pp. 133-138; Caprio, *Sex. Adeg. Fem.*, pp. 72-74; *Encyc. Sex. Behav.*, p. 498; Cavanagh-McGoldrick, *op. cit.*, p. 548; Keating, *Mental Impairment*, pp. 4, 23, 37 with pp. 158-160. In one of its forms, which appears to be psychogenic, it may lead to lesbianism because of failure to achieve orgasmic womanhood and of frustrations. Cf. Ellis-Sagarin, *op. cit.*, pp. 136-137. In its operative end result, i.e., in its actual sexual behavioral aspects and activity in respect to its ensuing interpersonal heterosexual relationships, it is a psychological phenomenon and as such it pervades the personality of its subject. Cf. Cavanagh-McGoldrick, *op. cit.*, pp. 545-546, 546-548. In the context of these considerations, close analysis of these types of psychic impotence appears to warrant the following conclusions. The psychic process is present, albeit in its specifically pertinent form in each type, as a common denominator in all of these types, at least to some extent and in some manner in the production of cases of psychic impotence. Accordingly, actual psychic impotence, as the product of a psychodynamic process and as the ultimate behavioral end result, is, upon close analysis, inherent, resident, and operative, not precisely in the person as such, its remote origin (as the seat of intellection and volition), but precisely in the psychodynamically established and orientated, usually overt, behavioral action pattern, i.e., precisely as in and of the active personality structure. Therefore, it is the behavioral personality structure which is ultimately involved in and productive of actual psychic impotence. And as such it results in an impairment of and an impediment to the harmonious psychosexual interrelations of heterosexual personalities. This condition, in turn, is reflected in, adversely influences, and adversely impairs the general interpersonal relationship. In respect to homosexuality in particular, actual psychic impotence, in any specific form, if it results therefrom, is, as a matter of fact, ultimately resident and operative in the behavioral pattern. Therefore, the homo-psychosexual mentality, direction, and orientation, the remote and basic cause of active psychosexual inversion and basis of the impotence, is operative and expressed in the actual personality pattern. Briefly, in respect to homosexuality in particular, overt impairment in the heterosexual interpersonality relationship is the result of the dynamically homo-psychosexual process which expresses therein its adverse homo-sexual mentality and orientation. Homo-psychosexual inversion is an interpersonal phenomenon, and as such it is related and directed toward the other of the same sex as its sexual homophilic object and thereby evokes, or tends to evoke, in the subject overt sexual activity as a homoerotic reactive response in regard thereto, at least in fantasy; it is not directed toward a mere objectively speculative and impersonal thought process, emotionally detached from subjective homo-psychosexual, physical activity. In regard to the habituated male psychosexual invert, this description must be regarded as developed to an advanced stage. As such it portrays the grip of a virtual vice, which, perforce of his obsessive homoerotic thinking and emotions, absorbs

The impotence in these cases is alleged in the concomitant presence of male psychosexual inversion, the qualitative features and quantitative extent of which, as said, are generally not reported with effective clarity for the purposes of the present discussions. In these cases of homosexual inversion, the impotence in issue seems obviously contemplated as the end result of a psychosomatic process and phenomenon.⁴² Incidentally, it may be noted that in one of these Rotal decisions a definition of homosexuality is presented as homo-psychosexual inversion. It correctly incorporates the concept of genuine and true homosexuality, which is the psychosexual orientation to the same sex and a deviation, in inverse ratio, from psychosexual attraction to members of the other sex.⁴³ This concept is adverted to here because homosexual inversion as thus defined and as considered in this study influences or even envelopes the personality and its psychodynamics, its purposeful strivings.⁴⁴ In all six cases, the court could not find the impediment of impotence as alleged. Therefore, the capability of consummation is recognized as at least probable, and the question of consummation or non-consummation is, *per se*, problematic and variable from case to case. In these cases, the condition of male sexual deviation is recognized as present. One case is characterized as presenting latent homosexuality; it would seem that the term is here to be understood as simply excluding overtly active homoeroticism.⁴⁵ Another case may also be so

and pre-empts his personality, disintegrating, divorcing, isolating it, by irrational thought processes of frustratingly and devastatingly (perhaps anxiety-ridden), and pejoratively self-defeating emotional depletion, from the totality of his environmental context of wholesomely active and emotional life and living. Cf. Hatterer, *op. cit.*, pp. 184-185 with pp. 204-207 and pp. 292-293. These conclusions are abundantly supported regarding male homosexuality, in the work of Hatterer, *Changing Male Homosexuality in the Male—Treatment for Men Troubled by Homosexuality*; regarding lesbianism, in the works of Caprio, esp. *Female Homosexuality*; regarding homosexuality in general, in the work of Cory-LeRoy, *The Homosexual and His Society—A View from Within*, with observations also in respect to lesbianism, pp. 41-42, 158, 160, 161, 162-163, 164, 165-166. The foregoing considerations appear to make it imperative to view the general concept of impotence under a division of three categories, and not in the simple dichotomy of anatomical and functional, because each division represents a basic, original source thereof; scil. anatomical, physiological, psychological. And in an actual case a traverse and combination of these categories may well be found verified as the end result in impotence, i.e., in a psychosomatic or somatopsychic process and disturbance, or failure. Cf. Cavanagh-McGoldrick, *op. cit.*, pp. 446-447; pp. 543-548; pp. 552-560; *Taber's Cycl. Med. Dictionary*, s.v. psychosomatic, somatopsychic, in regard to this specific terminology.

⁴² Cf. text of Rotal decision cited in the footnote immediately *supra*.

⁴³ Tobin, *op. cit.*, p. 102: "The Rota decision ventured to indicate a descriptive definition of homosexuality: 'Homosexualismus seu psychica deviatio erga personas eiusdem sexus vitium constituit quod non raro minuit vel aliquando fere aufert proclivitatem sexalem in personas alterius sexus.'"

⁴⁴ Cf. Cory-LeRoy, *op. cit.*, p. 34—a description by Freud. To the same effect, the definition and explanation by Hadden, in Hatterer, *op. cit.*, p. 15, male homosexuality, and of Hatterer, p. 17, a clinical definition.

⁴⁵ Cf. Tobin, *op. cit.*, pp. 103-104.

characterized, or perhaps as bisexual; but it seems not to be so recognized in the text.⁴⁶ Also, apparently the courts recognized the homosexual conditions as a cause of impotence (but presumably curable), except perhaps in one case (of a latent homosexual? or of a bisexual?), in which case, however, non-consummation was found;⁴⁷ whereas in two of the other cases the condition of sexual inversion was apparently found to be a very significant factor as the cause of impotence.⁴⁸ Moreover, except in one case, in which, however, attempted heterosexual copulation was found repulsive,⁴⁹ the court also apparently found homosexuality as an adverse interference with consummation. Finally, except in this one case, just noted, non-consummation was found as a basis for papal dispensation *super rato*. Hence it is also obvious that the partners were not reconcilable in the matrimonial consortium. It would seem that matrimony in the presence of psychosexual inversion failed in these cases apparently because of non-consummation, the one problematic case excepted, in which non-consummation was not found in two decisions at the Roman Rota. In this particular case, the male homosexual partner was found to have civilly accepted in fact and in name the first child begotten perhaps by him and of his present wife. Yet even in this case, cohabitation, which was very brief—a total of some two weeks—failed, apparently in the presence of *passive* psychosexual inversion.⁵⁰ Thus, the sequence of salient events in these cases would be, chronologically: presence of psychosexual inversion, matrimony, non-consummation (or attempt at copulation under untoward and difficult circumstances), the dissolution of matrimonial life. Because of lack of report on the pertinent factual details necessary, the precise causal connection or relationship between the presence of the homosexual deviation in these cases, in whatever qualitative type or quantitative degree it existed, respectively, and non-consummation is not entirely objectively clear, except in two cases in which this relationship appears to be direct and certain.⁵¹

The prior case, before its introduction at the Roman Rota, was investigated in two separate procedures, i.e., in *super rato* and in “functional” impotence, respectively, in both of which the petitioner failed. On appeal at the Rota, these issues were combined, and the plaintiff failed as before. These failures are significant in this study and especially in the present discussion in reference to the question of connection between the psychosexual inversion and the non-consummation, and also the ensuing destruc-

⁴⁶ Tobin, *op. cit.*, pp. 101-102.

⁴⁷ *Op. cit.*, pp. 101-102.

⁴⁸ *Op. cit.*, pp. 98-101; pp. 106-107.

⁴⁹ *Op. cit.*, pp. 104-106. The court did not find either the impediment of impotence or non-consummation.

⁵⁰ *Loc. cit.*

⁵¹ *Op. cit.*, pp. 98-101, 106-107.

tion of the matrimonial relationship, precisely in view of the final disposition of this case on second appeal at the Rota. The presence of psychosexual inversion was apparently not questioned in any of the procedures. Yet not only could the previous tribunals not be convinced that the homosexual male was barred by the impediment of impotence; they were also not convinced that he did not consummate the marriage. But on second appeal at the Rota, defendant was found to be a passive homosexual, which fact appears not to be in dispute.⁵² This new feature of passive homosexuality is important in respect to the topic of the present discussion concerning heterosexual copulation, as also appears in the record of the second appeal. It is significant also therein that it serves the occasion to understand with greater insight and appreciation the homosexual mentality and orientation as foreign and adverse to the hetero-psychosexual direction, basic components of the deviant personality. This subject will be analyzed briefly and presented hereinafter in conjunction with the present case. In this case, the final decision could not find the impediment of impotence. It did find non-consummation, apparently as the direct and certain result of the psychosexual inversion of the defendant. Also, it seems apparent that the matrimonial consortium failed, after some eight months, because of the condition of homosexuality and non-consummation⁵³ and that the failure was irreconcilable. But it must be noted that the yardstick employed by the Rota in refusing to find the impediment of impotence in this case (as in all the others) is based squarely upon canon 1068 understood in the terms of canons 1015, § 1, and 1082, § 2. The question of the inability of the homosexual personality and orientation to sustain the matrimonial consortium on an enduring basis and on even a minimal level of compatibility never enters into contemplation in these cases, on the issue of nullity. The possibility of conjugal heterosexual copulation is addressed as the only necessary, redeeming feature for the existence of the matrimonial estate. The essential interest is obviously directed exclusively to the question of conjugal heterosexual potency, not to the question of conjugal heterosexual personality, in the matrimonial consortium, that is, on the issue of nullity.

In the latter case, the court found "a man affected by homosexuality from his early adolescent years." The judges noted that the respondent's deep-seated homosexuality from youth had been proved clearly. This, combined with all circumstances and testimony, led them to conclude to the non-consummation of the marriage. The Rota preferred to speak of a 'morali quadam inhibitione, vel de appetitus ac desiderii deficientia. De homine isto, probabilibus, asseri nequit': 'non potest [consummare]', sed potius asseri debet 'non vult [consummare], immo rectius dicamus':

⁵² Cf. Tobin, *op. cit.*, pp. 98-101. *Sacrae Romanae Rotae Decisiones*, XXXV (1943), Dec. XXII, 204-221.

⁵³ Cf. Tobin, *loc. cit.*

'velle nescit [consummare]'. The marriage was dissolved by papal dispensation. As noted, the decision could not find the impediment of impotence⁵⁴ from the homosexual condition.

As stated, in order to afford a deeper insight into the psychosexually inverted mentality and personality, a brief discussion of the "passive" homosexual is here presented. One may think of the passive, inverted mentality and personality as demasculinized. But this concept is attributable, in a lesser or greater degree, to any truly psychosexual invert. Rather, the passive homosexual is *pro tanto* the true homosexual himself, and as such demasculinized to a lesser or greater degree.

True homosexuality and its expression involve the personality of the subject and the psychodynamics, i.e., the purposeful direction, of its striving.⁵⁵ True psychosexual inversion to the same sex, in its advanced qualitative and perhaps also quantitative form, makes its mark and exerts its psychodynamic thrust upon the entire personality as a life-style or way of life.⁵⁶ As such it eliminates the concept of the heterosexual union in marriage and all that the latter implies.⁵⁷ In this context, it appears that particular attention may properly be drawn to the personality of the so-called passive male homosexual,⁵⁸ because it lends a deeper insight into the texture and possible extent of psychosexual deviation. At all events, the concept of passivity seems to be entirely valid and properly applied to reflect the psychosexual mentality, attitude, and overt sexual behavior on the psychological and, at least to some extent, physical level of activity.⁵⁹

In respect to the male homosexual, besides perhaps external feminine mannerisms, the so-called feminine passive role is undertaken by the subject in the overt homoerotic encounter and activity.⁶⁰ This type of behavior must be distinguished specifically and often oppositively from self-identification with the female dispositions, attitudes, and attributes of the female psychosexual personality.⁶¹ In a factual case of psychosexual inver-

⁵⁴ Tobin, *op. cit.*, pp. 106-107.

⁵⁵ This topic is accurately discussed in Cory-LeRoy, *op. cit.*, Chap. 4, pp. 32-48—Sex Acts and Attitudes, cf., e.g., pp. 32, 34, 36-37. Details of overt activities are in those contexts.

⁵⁶ Cf. Cory-LeRoy, *op. cit.*, pp. 18-20.

⁵⁷ Cf. Cory-LeRoy, *op. cit.*, pp. 20-21, 25, 30-31.

⁵⁸ The term "passive" in this context is rejected by some experts because the "passive" homosexual should be considered also as in an active role in overt activity. Thus, Bieber *et al.*, *op. cit.*, pp. 238-239. Or because the sexual role in overt practice is known to be interchangeable as between partners. Thus, Cory-LeRoy, *op. cit.*, pp. 37-38, 39; but see pp. 43-44, where a preferred sexual role is acknowledged.

⁵⁹ Cf. Bieber *et al.*, *op. cit.*, pp. 238-239, 242, 243, 247, 252; Cory-LeRoy, *op. cit.*, e.g., pp. 39, 47.

⁶⁰ Cf. Cory-LeRoy, *op. cit.*, pp. 37-40; Bieber, *op. cit.*, pp. 246-247.

⁶¹ This latter occurrence is an entirely and distinctly different heterosexual, psychological phenomenon.—Cf. Benjamin H., *The Transsexual Phenomenon* (New York: The Julian Press, Inc., 1966).—A scientific report on transsexualism and sex conversion in the human male and female. Jorgensen, Christine, *Christine Jorgensen, A Personal Autobiography*,

sion, there may be an ingredient of this latter phenomenon.⁶² The feminine-passive role in this discussion has reference to the overt corporal-genital juxtapositions in the mutual homoerotic encounter and activity, in a word, to the form of sexual expression.⁶³ The so-called feminine-passive-submissive homosexual (psychosexually inverted) role is reported to be *per se*, in actual practice, subject to reversibility or variability to the so-called active masculine-aggressive role either in the same or in a different overt homosexual encounter and consequent homoerotic activity under the circumstances of the entire occasion.⁶⁴ This consideration alone of homosexual ambivalence seems forcibly to indicate that the psychosexually inverted personality is notably withdrawn and alienated from the attitudes and direction of the hetero-psychosexual personality.

The "passive feminine, inferior" psychosexually inverted role is said, correctly it seems, to represent a view imposed by society.⁶⁵ But this view appears to have at least some substantial basis in the facts of overt homosexual behavior.⁶⁶ Indeed, the overt homosexual performance may be considered a pantomime of heterosexual coitus. Between lesbians, the sexual procedure may seek to imitate a coital activity with an achievement still much farther removed, of course, from the heterosexual reality.⁶⁷

As just stated, the passive homosexual does not represent *per se* a static role; the overt passive situation may be expected to change under conducive circumstances to an active "male" role in the same or different encounter. The term passive homosexual thus represents a volatile role and a *per se* relative connotation, a psychosexual condition transient to the male-aggressive role and vice versa, relative to the circumstances present and the personalities involved. Yet, there are those, an appreciable group, who prefer a static role, either the so-called feminine or masculine.⁶⁸ But whether the overt homosexual expression is uttered in a static role (feminine-submissive or masculine-aggressive) or in a variable role, the conclusion remains that in either case the confirmed homopsychosexual personalities and their mutual liaisons are the basis and function of a truly esoteric way of life, and that they are phenomena far removed from the orbit of the heterosexual rapport, mutuality, and reciprocity founded in true conjugal love.

Introd. Harry Benjamin, M.D. (New York: Bantam Books, 1968).

⁶² Referred to, perhaps, in Cory-LeRoy, *op. cit.*, pp. 44; and certainly in Ellis, A., *op. cit.*, p. 56.

⁶³ Cf. Cory-LeRoy, *op. cit.*, pp. 35, 41, 43-48.

⁶⁴ Cory-LeRoy, *op. cit.*, pp. 37-39, 44, 45-46. Apparently in accord with severe statistical limitation, Bieber, *op. cit.*, pp. 246, 251, 252.

⁶⁵ Cf. Cory-LeRoy, *op. cit.*, pp. 39, 48.

⁶⁶ *Op. cit.*, pp. 38, 39; Bieber, *op. cit.*, p. 247.

⁶⁷ Cf. Cory-LeRoy, *op. cit.*, pp. 37-39, 41, 43.

⁶⁸ Cf. Cory-LeRoy, *op. cit.*, pp. 43-44; Bieber, *op. cit.*, pp. 246, 252.

The dominant characteristic of the passive male homosexual as such seems to be the overt attitude of submission⁶⁹ toward the partner in the homoerotic encounter and activity. The passive male homosexual accordingly presents a personality dependent by reason of inhibition of sexual behavior, which results in the sense of psychosexual inadequacy. He has been bereft of and lacks the psychosexual authenticity and the rigid, indefectible, and enduring authority naturally inherent in genuine and true masculinity—he is impotent at least to some degree. This sense of psychosexual inhibitory inadequacy is transferred to other spheres of behavior. In other words, the sense of inadequacy has become integrated into the warp and woof of his personality.⁷⁰ This passive enmeshment in psychosexual deviation consists of certain basic characteristics of his homosexual personality, which, from even the standard of male homosexuality, are degeneratively enlarged and emphasized in the psychologically passive condition: fear of self-assertion including also the sexual element, a sense of submission including sexual submission to see the partner as masculine, of inferiority, of excessive dependence in personality, of defeat even as a homosexual, of emasculation and loss of manhood and hence of feminization, of feminine role identification and suppression of gender identity, of degradation, and of perhaps total homosexual passivity, all of which do or may invade and envelope perhaps the entire personality.⁷¹ Briefly, the passive male homosexual personality is cast in the so-called “passive feminine role,” is the “effeminate male,” and acts the “substitutive female role,”⁷² with a personality pattern adapted to this perhaps preferred mode of sexual relations.⁷³ The sense of weakness, of submission, of inferiority, of failure is equated with femininity, which leads to its own type of homosexuality and its activity. This general attitude of abasement (inferiority) in passive psychosexual deviation seeks psychodynamically, i.e., purposefully, reparative security and assurance in the psychosexual association or liaison with the stronger “male.”⁷⁴ Hence one may reasonably conclude that the personality of the passive deviate stands demasculinized from even the standard of the homosexual “male.”⁷⁵

But besides the overt specific character of homosexual activity on the part of either party thereto, there is the more important question of its motivation and etiology. Motivation together with its own etiology affords, in the field of psychology and at law as well, always an important factor

⁶⁹ Cf. Bieber, *op. cit.*, e.g., pp. 242-243, 247, 248, 249-250, 252.

⁷⁰ Cf. Ovesey, L., *Homosexuality and Pseudohomosexuality* (New York: Science House, Inc., 1969), pp. 22-24.

⁷¹ Hatterer, *op. cit.*, *passim*, pp. 125-126, 128, 132, 139-140; cf. Bieber, *op. cit.*, pp. 239, 242, 243, 247, 252; Cory-LeRoy, *op. cit.*, pp. 44, 45, 48; Ovesey, *op. cit.*, p. 27.

⁷² Cory-LeRoy, *op. cit.*, pp. 36-37, 39, 43; apparently in accord, Bieber, p. 252.

⁷³ Cory-LeRoy, *op. cit.*, p. 44.

⁷⁴ Cf. Ovesey, *op. cit.*, pp. 24-27, and esp. pp. 29-30.

⁷⁵ Cf. Hatterer, *op. cit.*, pp. 188-190, 221-222.

and strong directive thrust toward the interpretation and appraisal of the specific nature and meaning of human behavior. The psychodynamic, i.e., purposeful, meaning and goal-striving of the passive male invert as well as of all deviant homopsychosexual thinking and activity (male and female) constitute another distinct and much-variant topic and question, apart from the overt specific role in homosexual activity.⁷⁶ The psychodynamic development, meaning, and specific direction of the deviant psychosexual personality, and especially of its realized homoerotic activity, derive their ascertainment, understanding, signification, and significance—in a word, their interpretation—as resultant from the etiological factual events and circumstances together with their environmental development (etiological factors) incident, and in some instances peculiar, to each case.⁷⁷

In accord with the considerations in the foregoing discussions, it is opportune to present here the relevant facts and issues considered and determined in a second appellate procedure in a specific case, among those generally referred to above, before the tribunal of the Roman Rota. The case consists of a cause of alleged invalidity of matrimony on the basis of “functional impotence” arising from passive male homosexuality (psychosexual inversion).⁷⁸ It would appear that, after the first appellate procedure at the Rota,⁷⁹ the evidence was developed and refined and as such reexamined and reappraised in this second appellate procedure.⁸⁰ The presence of passive homosexuality as psychosexual inversion is admitted as the prevailing factor.⁸¹ Its role will accordingly be noted in the following summary of the cause. In particular, the observation in the opinion of this final appellate decision is noted to the effect “. . . that functional impotency can be admitted more readily in cases involving passive homosexuals.”⁸² This judicial opinion with its decision would appear to support precisely especially the conclusions in the analysis just presented in the foregoing, concerning passive psychosexual inversion.

⁷⁶ This matter is brought forward in Cory-LeRoy, *op. cit.*, throughout Chap. 4, “Sex Acts and Attitudes,” pp. 32-48, cf., e.g., pp. 32-33, 36-37, 38, 39, 44; cf. Caprio, *Fam. Homosex.*, pp. 116-120; *idem*, *Var. Sex. Behav.*, pp. 90-95, regarding the male; pp. 160-166, regarding the female.

⁷⁷ This position is advanced regarding the male by Bieber, *op. cit.*, throughout this work, cf., e.g., pp. 252-253, and particularly Chap. XII, “Conclusions,” pp. 303-319, esp. pp. 310-318, Psychodynamics, preponderantly in respect to the husband-wife-child triangular relationship; cf. also Chap. VIII. In respect to the male, cf. Caprio, *Var. Sex. Behav.*, pp. 90-95; in regard to the lesbian, cf. Caprio, *op. cit.*, e.g., pp. 160-166; *idem*, *fem. homosex.*, e.g., pp. 116-120, 121-122, 122-128, cases, 128-158. This theme is developed by Ellis, A., *op. cit.*, cf. esp. extensive detail, Chap. 2, pp. 51-77.

⁷⁸ *S. R. Rotae Decisiones*, XXXV (1943), Dec. XXII, 204-221. Cf. Tobin, *op. cit.*, pp. 98-101.

⁷⁹ *S. R. R. Dec.* XXXII (1940), Dec. XV, 141-154.

⁸⁰ Cf. *op. cit.*, pp. 205-206.

⁸¹ *Op. cit.*, p. 207, n. 21, and *S. R. R. Dec.* XXXII, Dec. XV, n. 4, p. 143.

⁸² Tobin, *op. cit.*, p. 99; and note 48: “Animadvertendum sane est agi in casu de pederastia adamussim passiva, in qua facilius admittenda impotentia videtur.” *Ibid.*, n. 21.

Defendant is found by the court to be a perjurer and moreover a person of dissolute way of life, and one most certainly the subject of habitual homosexuality, as already found in the decision appealed.⁸³ The court seems to contemplate and analyze the status of his personality. It accepts as complete and convincing the evidence, as assessed unequivocally and in accord by three experts, of his incapacity itself as absolute in respect to coitus, and of its origin from and its connection with the psychosexual inversion of the subject.⁸⁴ Accordingly, the impotence is seen by the experts as attributable to a deep-seated, passive homosexual inversion,⁸⁵ a psychophysiological phenomenon, basically entrenched in the psychic constitution of the subject in a stably confirmed state and controlling the condition of impotence.⁸⁶ Likewise, the impotence is antecedent to the marriage and as such is directly related to the present case of homosexuality as its cause extant in a confirmed state at that time.⁸⁷ However, although the court considers the impotence as certain, it does not find the impotence in respect to coitus as perpetual or irremediable (*impotentia perpetua seu insanabilis*), i.e., irreversible. It determines irreversibility as doubtful, granted that it is highly probable (*saltem valde probabili eiusdem impotentiae perpetuitate*).⁸⁸

This conclusion of the court is definitely not surprising from the psychiatric viewpoint. For the concept of conjugal impotence (*impotentia coeundi*) at canon law is understood essentially as the negation of the capacity to engage in penile-vaginal penetration encompassing the act of semination. This act, when accomplished, is the total fulfillment of the essential matrimonial commitment, according to the Code of Canon Law.⁸⁹

⁸³ *Loc. cit.*, p. 211, n. 10: "Stat nihilominus reum sibimetipsi contradixisse ac periurasse. Stat etiam ipsum virum moribus corruptum certissimeque turpissimo sodomiae vitio deditum, ceu appellata quoque tenuit sententia"; and n. 21. Cf. *S. R. R. Dec. XXXII*, Dec. XV, nn. 7, 8-9, 10, 12.

⁸⁴ *Loc. cit.*, n. 21-25. The court states in n. 21, in part: "Acta demum causae plenam suppeditant explicationem circa istae [sic] viri ad coeundum inhabilitatis, originem et naturam, concinentibus peritis qui absque ambagibus Maurum proclamant impotentem ac quidem absolutum. Innituntur periti in hoc proferendo iudicio in iam sat noto vitio sodomiae quo idem vir afficitur, uti ex ipsius Mauri confessionibus et ex testium assertionibus apparet; . . ."

⁸⁵ Cf. previous note, and *op. cit.*, n. 22-25.

⁸⁶ *Op. cit.*, n. 26, states in part, as the finding of the experts: ". . . vitium impotentiam in casu determinans, homosexualitas scilicet, quid esset in Mauri corpore se in eius instinctu immo in eius ipsa psychica constitutione radicaliter ideoque stabiliter firmatum."

⁸⁷ Cf. n. 21, *supra cit.* And n. 25 asserts: "Pari cum certitudine aiunt periti talem impotentiam matrimonium antecessisse, de quo dubitari nequit. Siquidem inhabilitas in casu stricte cum homosexualitate connectitur, quare, attento vitium istum detestabile in viro certissime ante nuptias firmatum exstitisse, prouti acta conclamant, sequitur eum eadem impotentia et ante matrimonium ineundum laborasse."

⁸⁸ *Op. cit.*, nn. 26, 28, 29.

⁸⁹ Cf. can. 1081; § 2, 1082, § 1, 1015, § 1, and can. 1068, § 1, and their accepted commentaries.

As noted in the foregoing, the capacity for even a minimal, sustained communication of conjugal, interpersonal, heterosexual relationship is essentially not required, much less its fulfillment. In contrast, as also already noted, even a confirmed male homosexual, by employment of the required and adequate homosexual, erotogenic imagery, may arrive at penile-vaginal penetration accompanied by semination.⁹⁰ Accordingly, if the male psychosexual invert, perhaps by some *tour de force*, succeeds in conjugal copulation, his bond of matrimony between the baptized is, under the provisions of the present law of the Code, placed beyond any expectation of remedy by annulment or by dissolution under these premises on the issue of impotence. If present, his incapacity to participate in abiding conjugal and domestic, heterosexual relationship occurring in the many other dimensions in the matrimonial estate is irrelevant thereto.⁹¹

The mere solitary or even sporadic heterosexual copulative encounter by the committed invert is *per se* actually a thing apart, as it were in the vacuum of the self, disassociated from his homopsychosexual personality and way of life. This disordered and perhaps emotionally disturbed psychosexual condition is, indeed, a far cry from an abiding pattern of even only the basically favorable conjugal, mutual, and multifarious heterosexual interpersonal relationship and intercommunion (consortium). The reason for this contrasting disparity is traced to the absence in the homopsychosexual personality of the basically all-important and inexorably necessary "sustained heterosexual consciousness," direction, orientation, and adaptation favorably responsive within the framework of the entire conjugal intercommunion (consortium). It is due as well and at once to the presence in his personality of the adaptation of the "homosexual consciousness" and consequently of its habitual direction and orientation, and of its positively adverse consequential effects not only upon conjugal sexual intercourse, but also in respect to the entire matrimonial interrelationship.⁹² From this analytic description, it becomes sufficiently clear that "homosexual consciousness" as well as "heterosexual consciousness" are all-important factors woven into the warp and woof of the personality in its relation to the entirety of life and living, and that the element of sexuality is not a phenomenon apart therefrom. These considerations and conclusions are supported, at least in part, by the respective evidentiary facts found in the opinion of the Roman Rota in the specific case introduced in the foregoing and contemplated in the present discussion.

⁹⁰ Cf. Hatterer, *op. cit.*, in which this position is frequently inferred or drawn into consideration, e.g., pp. 266, n. 7, 266-267, 271-272, 294, 304, 305, 375.

⁹¹ Cf. cann. 1081, § 2, 1082, § 1, 1015, § 1 and § 3, 1118, 1119, 1120, § 1.

⁹² Cf. Hatterer, *op. cit.*, in which these conditions are frequently either alluded to, or expressly stated, or emphasized in the reports of psycho-therapeutic procedures in respect to specific cases and in the general expositions and explanations throughout this work, e.g., pp. 226, 266-267, 269, 271, 272-274, 303-304, 334, 336-337, 338-339, 341, 342-344.

The opinion of the Rota in this specific case does not disclose in extended factual details the character of the conjugal interpersonal relationship. The observations of the court in regard thereto stand rather on the periphery of the cause considered in respect to the specific issue of the impediment of psychosexual impotence as such; to this, however, had been subjoined the question of non-consummation. These facts, such as disclosed in the opinion, are employed in the Rotal opinion to show ample reason and cause to recommend the dissolution of the matrimony as *ratum et non consummatum*.⁹³

Sufficient basic facts are, in the opinion of the court, found as leading to the disastrous conjugal interrelationship in this case. *Protanto*, these same facts tend also to positively support the intention of this discussion and this study generally, to show the substantial incapacity and incompatibility of the confirmed—as noted in this case—homo-psychosexual personality to maintain the status of the matrimonial interpersonal relationship on an enduring basis at even a minimal level, to the following effect. The court finds that the matrimonial cohabitation was very brief and distressed by dissensions, the sole cause of which was the disturbed and disordered state of conjugal relationship (*ob intimarum coniugum relationum irregularitatem*).⁹⁴ Likewise, that desertion by the wife occurred because of and after her discovery of the homosexual situation of the respondent, and of his continuation therein after his promise of amendment.⁹⁵ The opinion of the court then moves to the question of non-consummation of the marriage, which it accepts as certain and which it attributes as an effect in direct causal relation to the psychosexual inversion and its ensuing sexual impotence.⁹⁶ More precisely, the court finds the passive homo-psychosexual condition, the ensuing absolute impotence with its incapacity for penile-vaginal penetration, and the non-consummation of the marriage as consequentially related and psychosexually inherently connected in direct causal-effectual relationship.⁹⁷ Briefly, non-consummation is seen

⁹³ Cf. can. 1119; *S. R. R. Dec. cit.*, n. 29-30; reversing the prior Rota decision on this issue. Cf. Tobin, *op. cit.*, p. 101.

⁹⁴ *Op. cit.*, p. 211, n. 11.

⁹⁵ *Loc. cit.*

⁹⁶ *Op. cit.*, p. 211, n. 11, in part: "Vitium [sodomiae] autem cum inhabilitate ad copulam etsi non semper, saepe tamen connectitur: unde, si eadem inhabilitas dubia tantum declaranda fuerit, iam exinde novum exurgi argumentum ad roborandam certitudinem de inconsummatis nuptiis in casu." And n. 25, in part: "Pari cum certitudine aiunt periti talem impotentiam matrimonium antecessisse; de quo dubitari nequit. Siquidem inhabilitas in casu stricte cum homosexualitate connectitur, . . ." And n. 26, text extended in previous annotation.

⁹⁷ Cf. *op. cit.*, n. 21, pertinent texts extended in previous footnotes. Moreover, the court declares, p. 217, in n. 21, in part: "Verum ulterius procedendum est et inquirendum, an inconsummatio a viri impotentia pendeat. Cui quidem quaestioni nonnisi affirmative responderi potest." Cf. also n. 25, quoted in previous annotation.

by the court as the inherent, direct result of the homosexual, psychophysiological impotence. Finally, the court finds in these premises sufficient justification both for the departure of the plaintiff and of the reasons for its recommendation for the dissolution of the bond of matrimony as presenting a case of non-consummation,⁹⁸ as well as for its provisional prohibitory injunction upon respondent to forbear entering upon a future marriage. In other words, the causes for departure from communal life, dissolution, and prohibition are based upon the homo-psychosexual condition, which is found to be in a confirmed state.⁹⁹ The following is offered as a relevant appraisal and conclusion in regard to this opinion and decision of the Roman Rota.

The opinion and decision of the court, in its finding of homopsychosexual impotence, in its justification of the departure of the plaintiff, in its recommendation of the dissolution of the bond of matrimony as non-consummated, from all of which ensued its prohibitory injunction upon the respondent, is based, indeed, upon the psychosexual inversion of the respondent-subject and his causally ensuing impotence and non-consummation, the reasons for the fatal destruction of the matrimonial consortium. One may venture to say that this consequence is the normal, or expected, result under these or similar premises. But these phenomena must not be considered merely as several or single moments in the course of events. They must rather be understood as establishing the existential continuity—indissociably connected in an abiding unitary reality—of the homopsychosexual way of life and living withdrawn from and positively adverse to the entirety of conjugal heterosexual companionship. The prohibitory injunction of the court seems to support this position. To the same effect is the relapse of the subject into his previous homosexual habit noted in the judicial opinion.¹⁰⁰ For this relapse may well be interpreted as attributable to the thrust and flight from heterosexual inadequacy and frustration. This behavior serves to reinforce his homosexuality and to complete the vicious cycle of his psychosexual inversion, i.e., flight from the sense of inadequacy and frustration to homosexuality as a defense itself productive of the sense of inadequacy and frustration, and so on.¹⁰¹

⁹⁸ Cf. Tobin, *op. cit.*, p. 101.

⁹⁹ *Op. cit.*, n. 29: "Neque causae ad hanc concedendam dispensationem desunt: sufficit sane ad rem ipsum nefandum sodomiae vitium, quo reus conventus laborat, quod certo actricem ab obligatione eximit cum tali viro convivendi. Attenta insuper certa Mauri impotentia et nisi certa saltem valde probabili eiusdem impotentiae perpetuitate, cavendum opportunum videtur ne ipse ad alias transeat nuptias inconsulta Apostolica Sede seu H. S. Tribunali. . . ." n. 30. ". . . vetito tamen viro transitu ad novas nuptias inconsulta Apostolica Sede. The prohibition is confirmed by the Supreme Pontiff (p. 221). The court specifically and explicitly notes in nn. 25 and 26 the confirmed state of the homosexuality; pertinent texts extended in previous annotations.

¹⁰⁰ Cf. *op. cit.*, p. 211, n. 11.

¹⁰¹ This homo-psychosexual occurrence is noticed emphatically in the texts of Hatterer, *op.*

One need not further labor the point that in this case the homosexual personality of the subject-respondent with its consequential impotence and non-consummation are the direct and effectual prelude to the morally irrevocable destruction of the matrimonial consortium. As already noted, the judicial opinion recognizes this homosexual condition as in a confirmed state before and at the inception of the marriage.¹⁰² Hence the subject is to be considered already as of that time as incapable of sustaining on an enduring basis the matrimonial consortium even upon a minimal level. Consequently, it is here submitted that this marriage and any marriage under the same or similar premises is subject and open to an action of invalidity because of moral impotence, i.e., incapacity morally irreversible to actually undertake and to sustain the matrimonial consortium.¹⁰³

However, in regard to the general complexion of the cases introduced in the foregoing as investigated at the Roman Rota, it appears correct to state, in general, that the precise relation in these cases, as reported,¹⁰⁴ between the presence of the homosexuality—to whatever degree it existed—and the terminal failure of conjugal intercommunion in matrimony seems not to be objectively clear, i.e., by evidentiary facts. Yet, as already noted, the ultimate fact does remain, that matrimonial society stands defeated in the presence of male homosexuality in all of these cases. Besides, or even regardless of, the question respecting psychophysiological, heterosexual consummation or non-consummation, the partners are morally irreversibly disassociated in regard to enduring, essential conjugal mutuality of their personalities.

This conclusion concerning the ultimate, morally irreparable disintegration of the matrimonial partnership in the presence of homosexuality is further supported in three other cases involving homosexuality. These cases were introduced at the Roman Curia during some thirty years prior to 1908, in actions of nullity because of “psychic impotence” in the presence of homosexuality.¹⁰⁵ Each case was accepted, however, on the issue of non-consummation, apparently in the interest of expedience in the economy of time and of evidence required.¹⁰⁶ Therefore, on this stipulated issue, the evidence on impotence, to the extent ascertainable, is referable not to the impediment of impotence, but to non-consummation. And the alleged presence of homosexuality would remain as a denominator common to

cit., *passim*.

¹⁰² *Op. cit.*, nn. 25, 26.

¹⁰³ It is submitted that this conclusion is directly supported by and in accord with the essential aspects of matrimony described in the document *Gaudium et spes* of the Council of the Vatican II, *Pastoral Constitution on the Church in the Modern World*, n. 47-52.—AAS, LVIII (1966), 1067-1074.

¹⁰⁴ Cf. Tobin, *op. cit.*, pp. 98-107, esp. Concl. nn. 5 and 6, p. 107.

¹⁰⁵ Tobin, *op. cit.*, pp. 95-98.

¹⁰⁶ Cf. Tobin, *op. cit.*, p. 95, note 37.

either action, i.e., of nullity or of non-consummation.¹⁰⁷ Accordingly, this stipulated revision in the pleadings seems significant in the present discussion for two reasons. Namely, it is, presumably, recognized that marriage is probably not consummated and that the relationship of the parties to each other as consorts in matrimony is irreconcilable, terminally defeated, in the presence of homosexuality. The pertinent evidence, as reported in respect to the three cases,¹⁰⁸ may be set forth in the following general summation.

The homosexuality is recognized as present. One of the cases is that of a female homosexual, a lesbian, which deserves special attention hereinafter. Except in the case of the lesbian, the evidence indicates with strong probability that the presence of male homosexuality influenced adversely the condition of male impotence.¹⁰⁹ But in all of the cases, there is, on the part of the homosexual consort, withdrawal from or refusal to engage in conjugal sexual intercourse. Non-consummation is found in each instance with recommendation for papal dispensation dissolving the matrimonial relationship. Finally, in consideration of the dominant facts just outlined, it seems reasonable to conclude, though not expressly stated in the reports, that the homosexuality, with its overt behavior in each case, directly influenced the terminal disruption of the matrimonial relationship. This conclusion seems emphatically correct in the case of the lesbian, the brief, salient details of which are the following.¹¹⁰

The lesbian is a bride of eighteen years of age. From the inception of matrimonial life and throughout the cohabitation of two months and four days, she "obstinately refused to engage in marital relations." She spends her nights alone in an emotional ("in tears"), and in what would appear to be a neurotic, state. Shortly after eight days from the marriage ceremony, her French governess obtrudes her personality upon the domestic scene. Under this strong influence, a liaison between the women¹¹¹ is immediate, exclusive, decisive, and inexorable against admonition to the contrary. The bride in the company of the governess abandons her husband

¹⁰⁷ Incidentally, the presence of homosexuality is considered a viable argument against consummation.—Tobin, *op. cit.*, p. 108.

¹⁰⁸ Tobin, *loc. cit.*

¹⁰⁹ Cf. Tobin, *op. cit.*, p. 95. In one case it is reported of the husband (*op. cit.*, p. 96): ". . . since he had heinously deflowered her [the wife] by use of his riding-crop, the moral argument for non-consummation was paramount. She swore that penetration had never taken place. He had told her that he was against having children." What appears to be phallic symbolism in this sadistic, futile act seems to suggest a demonstration of aggressive pseudo-masculinity. In the other case (*op. cit.*, p. 97), during the triennial period of cohabitation, the husband professes himself to his wife as impotent and a homosexual; conjugal intimacies do not occur; the husband treats his wife with unconscionable cruelty, mental and physical.

¹¹⁰ Cf. Tobin, *op. cit.*, pp. 95-96.

¹¹¹ Such lesbian association is a familiar figure in psychiatric literature. Cf. Caprio, *Fem. Homosex.*, e.g., pp. 7-11, 304-305.

after the period of two months and four days. During the canonical proceedings, the repeated counsels and exhortations administered and efforts exerted are impervious and futile against what appears evidently to be the overwhelmingly "strong fascination and morally harmful influence of the governess," in whose perverse company, it is noted, "The relationship between the two women was a public scandal and had given rise to all sorts of rumors."¹¹²

The foregoing brief exposition presents only the overt development of what appears to be genuine female psychosexual inversion in an apparently, at least presently, confirmed lesbian state.¹¹³ It would be incredible to postulate this lesbian condition on the part of the young bride, especially in view of its decisively positive response to the advances of the companion woman-intruder, as having its onset, inception, first only after the very brief period of matrimony. Namely, that only after some two weeks of matrimony, the subject suddenly altered her heterosexual personality to one of a lesbian to be firmly absorbed in this inexorable homosexual liaison. There is no indication, moreover, of bisexuality; in fact, the evidence set out above seems clearly to run to the contrary. The psychiatric literature employed in this study indicates unmistakably that true homosexuality necessarily pervades the personality and postulates an abiding homo-psychosexual attitude and way of life.¹¹⁴ A way of life signifies a usual manner of behavior, i.e., the action and reaction of the personality. It seems, therefore, obviously reasonable to assert that her lesbian mentality prevailed prior to her marriage and that this lesbian relationship had its antecedents therein. The question and prognosis of adjustment in this young personality to heterosexuality is problematic. This matter would depend in part necessarily, as noted in the literature, upon the will and attitude of the subject to strive toward, or to cooperate with and accept such adjustment.¹¹⁵ Refusal in this regard in the context of existing psychosexual inversion is obviously tantamount to expressing adherence to homosexuality, or at least continued withdrawal from adjustment to heterosexuality. Such negative attitude may well be part and parcel and evidence of the continuing psychosexual inversion. The element of impotence in this case, if any, seems rather to be perhaps reducible to a moot and speculative question. But there can be no doubt in this case of the lesbian

¹¹² Cf. Tobin, *op. cit.*, p. 96.

¹¹³ The report of this case does not, understandably, disclose the genesis and onset of what here appears to be an advanced genuine psychosexual condition.

¹¹⁴ Cf. illustration, Caprio, *Fem. Homosex.*, e.g., pp. 9-10, 12, 307; Hatterer, *op. cit.*, e.g., pp. 113, 148-149, 182, 292-293.

¹¹⁵ Cf. Caprio, *op. cit.*, e.g., pp. xvii, 116-117, 298-299, 307, in regard to the lesbian; Hatterer, *op. cit.*, e.g., pp. 57, 58, 59, 86, 87, 94, 100, 102, 104, 109, 112, 114, 115, 116, 127, 167, 182, 265, 287, in regard to the male homosexual; Cavanagh, *Counseling the Invert*, pp. 268-269; Tobin, *op. cit.*, pp. 287, 289, 293.

that her condition stands directly both in adverse interference with consummation of the marriage and as cause of the terminal dissolution of her matrimony. The lesbian seems here obviously incapable of sustaining the matrimonial consortium even on a minimal level, in consideration of which, it is submitted, an action of nullity in moral impotence would lie, especially in the event that the act of consummation had actually occurred.

It is a matter of judicial record that the Roman Rota, in a number of its opinions recognizes—precisely aside from the question of mere, valid consent—the existence of incapacity of the disordered personality to sustain and to carry on the fulfillment of commitments generally, and of those of matrimony in particular, to the effect that those so affected cannot be held to their commitment.¹¹⁶ In accord with this position is the report of clinical, psychiatric “overwhelming opinion,” ascertained in an extensive survey, to the effect that “confirmed homosexuals” are “unfit” “. . . subjects for the state or life of marriage . . .;” i.e., more precisely, “. . . the overwhelming opinion was that they were unfit subjects for assuming, sustaining and fulfilling the rights and obligations of the marital state. Hence in this case one might consider carefully whether the object of marriage was possible in reality, and thus, whether the bond was actually brought into existence.”¹¹⁷ As a matter of fact, the matrimonial relationship ends in terminal failure in all of the homosexual cases at the Roman Curia presented above. It must remain unmistakably clear that the issue presented in this study is not and does not refer to the question of capacity to formulate and utter the required matrimonial consent. The question of integrity of such consent does not *per se* enter into the issue of homosexual matrimonial incapacity. If it does, it enters collaterally in its own right and on its own merits.¹¹⁸ The deficiency, if any, is, therefore, not a question of matrimonial consent, but of substantial deficiency of conjugal, matrimonial personality, to the effect that the state of matrimony is simply nonviable *ab initio*.

One can reasonably conclude, from the premises and facts set forth generally in the pertinent literature, that the presence of homosexuality positively influences conjugal sexual relations adversely, as well as the estrangement of the parties and the dissolution of their marital partnership. It is common knowledge generally in the professional literature on

¹¹⁶ Cf. his text with report of decisions in Tobin, *op. cit.*, pp. 170-174, with esp. note 50, p. 171; see also, Keating, *Mental Impairment*, esp. pp. 154-200.

¹¹⁷ Text of Tobin, based on a survey undertaken and reported by him, *op. cit.*, pp. 300-301, 305-306. This survey and report seem to refer to male homosexuality, because there is, as known, comparative paucity of scientific information on lesbianism. The investigations of Bieber *et al.* and the treatise of Hatterer are on male homophilia, as well as, apparently, the work of Albert Ellis.

¹¹⁸ This difference is also explicitly noted in Tobin, *op. cit.*, e.g., pp. 301, 305-306, as well as in the work of Keating, e.g., *Mental Impairment*, *passim*.

this subject that the presence of homopsychosexual deviation in the personality is positively hostile to a satisfactory matrimonial relationship. As already noted, the behavior of the personality depends upon its hierarchy of values. A character construct which places homosexuality first, as a "top priority," produces a personality necessarily adverse, at least to some degree, to heterosexuality. The simple question then results, whether the personality is capable of implementing at all its matrimonial commitment. Thus as a matter of fact, among the cases introduced in the foregoing, in the specific case that failed on both counts (impotency and non-consummation), the presence of male homosexuality alleged as incurable and the existence of male repugnance to heterosexual copulation were apparently not seriously disputed. But matrimonial cohabitation lasted a total of only some two weeks.¹¹⁹

From these considerations and conclusions there emerges a practical question of particular moment in the sphere of judicial procedure. Is the factual, terminal disruption and dissolution of the matrimonial consortium of the psychosexual invert (male or lesbian; or only male?), who is confirmed as such *ab initio* of the marriage, a morally and as a rule, i.e., usually, mostly—or as the Latin texts on presumption would express the concept, *plerumque*—constant end-result because of his homosexuality and its consequential incapacity ensuing therefrom to sustain the matrimonial consortium? An affirmative answer, it is submitted, would seem correct in regard to the *male* homosexual on the basis of the sources employed in this study.¹²⁰ But if the answer is established as actually affirmative, it is submitted that there lies therein an action of nullity of the matrimony because of moral, i.e., behavioral, impotence. Likewise, that there seems to be therein laid also—provided that the premises in the action are properly verified in evidence—the basis of moral certitude of moral impotence in respect to this action of nullity of such matrimony.¹²¹

¹¹⁹ Tobin, *op. cit.*, pp. 104-106.

¹²⁰ There are positive indications in the pertinent literature that at least certain positive facets of the general character, psychological construct, and personality of the female, e.g., the feature based on the maternal instinct or on the approach to and capacity for love, would seem to disallow the contemplation, not to say assertion, of an indiscriminate rule of behavior, including also the lesbian, in this regard.

¹²¹ Following is the pertinent authentic text (cf. Tromp, *infra, op. cit.*, p. 3), of the allocution of Pius XII to the Roman Rota in 1942, on moral certitude: "Nelle cause concernenti la incapacita psichica o somatica di contrarre le nozze, non meno che in quelle riguardanti la dichiarazione di nullita del matrimonio o lo scioglimento, in taluni determinati casi, del vincolo validamente contratto, Noi, . . . avemmo ad osservare come occorra la certezza morale. L'importanza dell' argomento Ci fa stimar utile di esaminare piu accuratamente questo concetto; poiche, a norma del can. 1868, § 1, se richiede la certezza morale circa lo stato di fatto della causa da giudicare accioche il giudice possa procedere a pronunziare la sua sentenza. Ora tale certezza, *la quale si appoggia sulla costanza delle leggi e degli usi che governano la vita umana, ammette vari gradi*" (italics inserted).—Tromp, S., S.I., *Allocutiones Tres Pii Papae XII Ad S. Romanam Rotam Habitae* (Romae: Pont. Univ. Grego-

The subject of disastrous, disruptive, and disrupted social-matrimonial-familial relationship occurring in the milieu of homosexuality was formerly reserved to the province of professional and scientific literature. This topic has emerged and is faithfully reflected, in respect to its overt, resultant dimensions, in special sections of modern-day popular printed news media, and is thus coming into popular consciousness. Many of these human interest reports are of a sober and serious character; not flamboyant, sensational, and excessive portrayals. Rather, they present what scientific study and investigation have already disclosed and corroborated as the abortive arrest and failure of the matrimonial relationship in the ambiance of psychosexual inversion.¹²² These expositions derive, apparently, from matrimonial incidents of non-clinical, non-institutional, ordinary, daily life cast in agitation and disturbance from the specter of homosexuality. They indicate confirmation of the position that, in the presence of homosexuality with its proper contexture and sufficient antecedent premises, the matrimonial consortium cannot morally and as a rule continue to subsist. That at least in its presence, matrimony runs the perhaps unalterable, serious risk of failure.

riana, 1944), pp. 22-23; AAS, XXXIV (1942), 339; *Canon Law Digest*, III, 606; Noval explains the concept: “. . . certitudo . . . moralis . . . Et quidem requiritur et sufficit certitudo moralis lata vel imperfecta, seu probabilis; nam, ut docet S. Thomas (II-II, q. LXX, a. 2, et I-II, q. XCVI, a. 1, ad 3), ‘in actibus humanis . . . sufficit probabilis certitudo quae in pluribus veritatem attingat, etsi in paucioribus a veritate deficiat,’ . . . Non autem requiritur certitudo moralis stricta, vel perfecta seu omnimoda et demonstrativa, quae tollat omnem errandi formidinem; quia, ut idem S. Doctor dicit ‘materia moralis talis est quod non est ei conveniens perfecta certitudo . . .’ (In Lib. I, Ethic, lect. 3; I-II, q. XCI, a. 3, ad 3); ‘materia moralis est varia, non habens omnimodam certitudinem’ . . . ‘non potest certitudo prudentiae tanta esse quod omnino sollicitudo tollatur’ (II-II, q. XLVII, a. 9, ad 2).”—*Liber IV, De Processibus*, Pars I, *De Iudiciis* (Romae: Marietti, 1920), n. 621.

¹²² Examples of such reports are instructive; here abbreviated.—“DEAR ANN LANDERS: I’m 24, have a good job, enjoy good health and am a happy homosexual. I’m what is known as a closet queen. No one would guess I go both ways. My parents . . . I don’t want them to suspect anything. But I really don’t enjoy girls very much and I’m beginning to think it’s not worth the trouble. The problem is this: When I take out the same girl more than once, my boyfriend gets very upset because he’s afraid I am going straight. Please don’t suggest that I seek psychiatric help. I do not consider homosexuality an illness. In fact, I am a lot healthier emotionally than many of my hetero-sexual friends.—GAY BLADE.—DEAR BLADE: In light of your apparent adjustment why not put an end to the masquerade? . . . put an end to the duplicity . . . because it’s unfair to use girls as a cover. You’d be surprised if you knew how many naive women fall in love with homosexuals, and are heart broken when they learn the truth.”—Ann Landers: “Happy Homosexual,” *The Washington Post*, Wed., Feb. 23, 1972, p. B4. “DEAR ANN LANDERS: . . . you printed a letter from an 18-year-old boy who signed himself ‘Gay But Not Happy.’ You gave him the right advice, and I hope he listens to you. I speak from experience. I knew I was a homosexual, but was convinced that if I married, I would be able to lead a straight life. . . . I married a lesbian who was playing the same game. She didn’t know about me, and I didn’t know about her. . . . tragic . . . The marriage lasted all of six months. She went back to her girl friend, and I went back to my gay pals. Three years later I married again . . . a heterosexual woman. She said she loved me and didn’t care

about anything else. We have companionship but no sex life to speak of. . . . I should not have tried to fool the world, or myself. I should have had therapy and learned how to live with the problem. I feel like a heel for having married . . . a fine person . . . she is willing to 'settle' . . . I have done her a grave injustice. . . . My letter for those for whom it may not be too late.—MASQUERADE.—DEAR MASQUERADE: . . . And now a word about your wife. A woman who marries a homosexual and is willing to 'settle' is getting what she wants—which is mostly to be left alone.—*Eadem, op. cit.*, Thursday, Feb. 25, 1971, p. C10. (Author's note.—The ill-fated male homosexual-lesbian matrimony is noted by Havelock Ellis, reporting the investigations of Magnus Hirschfeld.—*op. cit.*, vol. I, Part IV, p. 334, note 1.) "DEAR ANN LANDERS: . . . letter signed 'Family Man Who Made The Switch' got to me. He described himself as a bisexual—a one-time closet queen who opted to abandon the gay world, get married and raise a family. Horsefeathers, dear. As a reasonably balanced, fairly content Queen who doesn't care for closets, I take issue with 'Family Man.' He's only kidding himself. That wife of his is a mama figure, an apron to hide behind. . . . A guy who cruised gay bars in college likes fellas better than ladies, and you'd better believe it. Marrying that 'nice girl' was a dirty trick, . . . a male whose four years at college were filled with 'bizarre homosexual escapades' is not about to throw a switch and be converted into a happy family man.—PIN-CURL CHARLIE.—DEAR PIN-CURL: Thanks for a direct line to The Third World. . . .—*Eadem, op. cit.*, Friday, Feb. 25, 1972, p. B6. (Author's Note. This protest-essay upon the integrity and personality of the subject could be the expression of one's own frustration, bitterness, and projection of the homosexual personality. Hence the answer seems quite appropriate, and given with a flavor of repartee. As is known, a "switch" is possible under favorable premises.) "DEAR MARY HAWORTH: . . . he wants to marry . . . he is bisexual, and the girl doesn't know it . . . he'd be making a big mistake, but he won't listen. I want to spare her the sorry consequences that might befall her if they marry. . . .—C. C.—DEAR C. C.: Certainly a male who isn't securely anchored in heterosexual masculinity, who wavers across the border into bisexual practice, would be a rotten risk as a husband—for a wife who aspired to orthodox, normal, equitable conjugality. So, assuming your cousin is actively bisexual, and the girl is unaware of this, your concern to give her due notice, to spare her demoralizing hurt if possible, seems morally valid, . . . if such a warning . . . probably . . . by/through the older generation. . . . M. H."—Mary Haworth, *op. cit.*, Wednesday, Dec. 2, 1970, p. C7. "DEAR ANN LANDERS: I am a clergyman in a New England community who has had training in marital counseling. . . . Two couples in my parish, both married for nearly 15 years, always came to services and church social affairs together. They were very close friends, took vacations together, which always included their children. . . . I never considered it unusual. . . . the two couples asked for an appointment . . . a highly personal matter. . . . I guessed a romantic involvement between Mrs. A and Mr. B. . . . the romance was between Mrs. A. and Mrs. B, I was at a loss for words. The husbands seemed resigned to the fact that their wives want divorces so they can live together . . . also agreed that the children should stay with their mothers. These women are both attractive, seemingly feminine, college graduates, and well thought of in the community. . . . The couples did not come to me seeking condonation. They came to ask if I thought this living arrangement would have an adverse effect on their children. . . . DEAR C. F.: . . . what these women decide to tell their children about their relationship. (I would hope they didn't [sic] get too explicit.) They should continue to get frequent counseling, . . ."—ANN LANDERS, *op. cit.*, Tuesday, Feb. 15, 1972, p. C4.