

FORENSIC PSYCHIATRY AND THE ROLE OF EXPERTS IN CANON LAW

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In the ecclesiastical tribunals experts have a greater role and relevance in arriving at proper judicial sentences of matrimonial cases. In this article, Boby Sebastian Tharakunnel, OCarm, discusses, however, a theme which is not that common and often treated. The author claims that forensic psychiatry and experts in this field can contribute much in the decision making process of the matrimonial cases in ecclesiastical tribunals, especially cases related to psychic nature. Disclosing the distinction between a psychiatrist and a forensic psychiatrist and their roles, the author says that whereas forensic psychology is a sub-speciality of psychology, forensic *psychiatry* is a sub-speciality of psychiatry that combines the latter with criminology. The forensic psychiatrist brings special skill and knowledge to legal proceedings concerning questions of mental competence, which is required to stand trial and be held culpable for criminal acts.

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1. Introduction

Forensic psychiatry and canonical studies are two emerging topics attracting much attention in ecclesiastical jurisprudence. Consequently, ecclesiastical tribunals and tribunal personnel should be aware of developments in these fields and the changes and challenges they bring along with them. The main purpose of this article is to highlight the usefulness of forensic psychiatry in ecclesiastical matrimonial cases joined on causes of a psychic nature. It introduces forensic psychiatry and its definition, terminology, and historical development. To clarify the terminology, it also briefly explains the difference between a psychiatrist and a forensic psychiatrist and their roles in order.

Expertise is a must in tribunal practice; hence the expert has a special function in dealing with psycho-juridical issues in the tribunals.¹ As an expert witness, the forensic psychiatrist brings special skill and knowledge to legal proceedings concerning questions of mental competence, which is required to stand trial and be held culpable for criminal acts. In assessing persons alleged to suffer from mental or personality disorders, the forensic psychiatrist arrives at his or her conclusions by examining the forensic proofs, the accused party and the relevant witnesses.

The role of experts in ecclesiastical tribunals is important in helping the judges to understand the scientific, medical, psychiatric and psychological aspects of a given case.² Hence, in this article based on *CIC* cc. 1574-1581 and *CCEO* cc. 1255-1262 is studied under three titles: 1) the role of the experts; 2) the admission of experts and their tasks; and 3) the expert's report and its value. In marriage nullity cases based on *causes of a psychic nature*, the expert service of either a psychiatrist (forensic) or a clinical psychologist is obligatory. Hence, it is relevant to have a good knowledge of forensic psychiatry to better understand psychological problems related to marriage and the law. On the foundation of forensic psychiatry, the psycho-juridical problem of personality disorders will be considered in detail.

¹Nick Craddock and Mike Kerr, "What is the Core Expertise of the Psychiatrist?" *The Psychiatrist* 34 (2010), 457-460.

²Augustine Mendonça, "The Apostolic Signatura's Recent Declaration on the Necessity of Using Experts in Marriage Nullity Cases," *Studia Canonica* 35 (2001), 33-58.

2. Forensic Psychiatry and Experts

Whereas forensic psychology is a sub-speciality of psychology, forensic *psychiatry* is a sub-speciality of psychiatry that combines the latter with criminology. Forensic science involves the application of scientific knowledge to legal problems.³ In civil law and, sometimes, in canon law, forensic psychiatrists stand between psychiatry and the law. The role of psychiatrists and forensic psychiatrists is crucial: their analysis of a person's mental state when the crime is committed, investigated and at the time of trial helps determine the person's legal culpability and eventual punishment. Psychological evaluation, expert testimony, research, etc., are the common major functions of a forensic psychiatrist.⁴ If the forensic psychiatrist had to do all the above, that might be somewhat overwhelming. Most forensic psychologists are specialized in an area or two. It is also important to keep in mind the ethical responsibility and professional competence of forensic practitioners.⁵

2.1. Forensic Psychiatry: Terminology and Definition

The word forensic comes from the Latin word *forensis*, which means "before the forum, of or pertaining to the forum, a public place"⁶

³Alan M. Goldstein, ed., *Forensic Psychology: Emerging Topics and Expanding Roles*, New Jersey, John Wiley & Sons, 2007, 5-9; Anne M. Bartol and Curt R. Bartol, "Overview of Forensic Psychology," in Curt R. Bartol and Anne M. Bartol, *Introduction to Forensic Psychology* (Thousand Oaks, CA: Sage Publication, 2004) 3-12, p. 3.

⁴Stephen J. Morse, "The Non-Problem of Free Will in Forensic Psychiatry and Psychology," *Behavioural Sciences and the Law* 25 (2007), 203-220, p. 203. This article is available online through Wiley Inter Science at www.interscience.wiley.com.

⁵This study at times interchanges *psychology-psychiatry* and *psychologist-psychiatrist* to point out aspects of these sciences and to denote aspects of forensic psychiatry. Hence, one must pay special attention to these terms. Karen C. Kalmbach and Phillip M. Lyons, "Ethical Issues in Conducting Forensic Evaluations," *Applied Psychology in Criminal Justice* 2/3 (2006), 261-290, p. 266.

⁶William Smith and John Lockwood, *Chambers Murray Latin-English Dictionary* (London: Chambers, [reprint] 2007) 279. The prefix "for" in Latin means speak, talk, say, etc., and "ensis" means sword. So *forensic* could mean to speak to sword or to speak before the *forum* or before one who has the power to use a sword, i.e., to execute. John C. Traupman, *The New*

where Roman courts of law were located. "In Rome, 'forum' was the meeting place where civic and legal matters used to be discussed by those with public responsibility. Thus, the word 'forensic' essentially conveys any issue related to the debate in the courts of law."⁷

Mart explains that forensic psychology "involves matters in some way associated with the courts and with legal decisions."⁸ Similarly, forensic psychology is an intersection of the legal system and psychology. Krishan Viji defines forensic or medical jurisprudence citing Alfred Swaine Taylor:

Medical jurisprudence (or as it is sometimes called, Forensic, Legal or State Medicine) may be defined to be that science which teaches the application of every branch of medical knowledge to the purpose of the law; hence its limits are, on the one hand, the requirements of the law, and on the other, the whole range of medicine. Anatomy, physiology, medicine, surgery, chemistry, physics, and botany lend their aid as necessity arises; and in some cases all these branches of science are required to enable a court of law to arrive at a proper conclusion on a contested question affecting life or property.⁹

Such a definition allows contributions from both law and psychology. In present day usage, *forensic* refers to a method of obtaining criminal evidence to use in a court of law. Forensic science, typically referred to as *forensics*, is the practical application of

College Latin and English Dictionary, revised and updated edition (Philadelphia: Bantam Books, 2007) 187.

⁷Krishan Viji, *Textbook of Forensic Medicine and Toxicology: Principles and Practice*, 6th ed., (New Delhi: Reed Elsevier India, 2014) 4.

⁸E. G. Mart, *Getting Started in Forensic Psychology Practice: How to Create a Forensic Speciality in Your Mental Health Practice* (Hoboken, NJ: John Wiley & Sons, 2006) 1-2.

⁹Alfred Swaine Taylor, *A Manual of Medical Jurisprudence* (Philadelphia: Henry C. Lea's Son & Co., 1880), https://play.google.com/books/reader?id=6PM0AQAAMAAJ&printsec=frontcover&output=reader&hl=en_GB&pg=GBS.PA17; Alfred Swaine Taylor, *The Principles and Practices of Medical Jurisprudence* (London: John Churchill & Sons, New Burlington Street, 1865) xvii; <https://books.google.co.in/books?id=DLQ9AAAACAAJ&printsec=frontcover#v=onepage&q&f=false>, See Krishan Vij, *Textbook of Forensic Medicine and Toxicology: Principles and Practice*, 6th ed., (New Delhi: Reed Elsevier India, 2014) vi.

numerous sciences to solve questions related to civil or criminal legal actions. "The use of the term 'forensics' in place of 'forensic science' is actually a globally accepted misnomer [inappropriate name] considering that the term 'forensic' is effectively a synonym for 'legal' or 'pertaining to the court,' from the root Latin meaning."¹⁰ *Forensic* is now so closely associated with the criminal scientific field, many dictionaries equate the word *forensics* with forensic science. The term forensic has come to embrace something much wider than its dictionary meaning, *pertaining to, connected with or using courts of law*.¹¹

Forensic science extends into diverse sub-sciences that utilize natural science techniques to obtain criminal and legal evidence. A.M. Goldstein proposes that forensic psychology "involves the application of psychological research, theory, practice, and traditional and specialized methodology... to provide information relevant to a legal question."¹² Forensic psychiatry and psychology are used to evaluate the mental competency of a person involved in serious cases where psychiatric or psychological grounds exist. According to Stephen Morse, "forensic psychiatry and psychology address problems genuinely related to responsibility, including consciousness, the formation of mental states such as intention and knowledge, the capacity for rationality, and compulsion."¹³ From this definition, it is clear that forensic psychiatry and psychology both focus on the mental state of the person involved in legal issues.

¹⁰All the single inverted commas in this citation are double in the original. Ugbe Agioliwhu Ugbe, N.N. Nwabueze and R.O. Arop, eds., "Police Science and Forensic Science," in *National Open University of Nigeria School of Art and Social Science Course Guide* (Victoria Island, Lagos: National Open University of Nigeria, 2012) 1-293, pp. 11-12.

¹¹Trevor Turner and Mark Salter, "Forensic Psychiatry and General Psychiatry: Re-examining the Relationship," *The Psychiatrist* 32 (2008), 2-6; *Oxford Advanced Learner's Dictionary*, 2010, 607.

¹²Alan M. Goldstein, "Forensic Psychology," in I.B. Weiner, ed., *Handbook of Psychology*, vol. 11 (New Jersey: John Wiley & Sons, 2003) 1-20; Alan M. Goldstein, "Forensic Psychology: Toward a Standard of Care," in id., *Forensic Psychology: Emerging Topics and Expanding Roles* (New Jersey: John Wiley & Sons, 2007) 3-43, pp. 4-7.

¹³Stephen J. Morse, "The Non-Problem of Free Will in Forensic Psychiatry and Psychology," *Behavioural Sciences and the Law* 25 (2007), 203.

The *Dictionary of Psychopathology* defines forensic psychology as a “reference to the legal dimension of the practice of psychological health services. Practically speaking, [it] usually involves expert court testimony by a psychiatrist, psychologist, or other mental health expert.”¹⁴ Today, forensic psychology means “all forms of professional psychological conduct... as a psychological expert on explicitly psychological issues, in direct assistance to courts, parties to legal proceedings, correctional and forensic mental health facilities, and administrative, judicial, and legislative agencies acting in an adjudicative capacity.”¹⁵ Forensic psychology brings well-founded scientific methods and behavioural research to shed light on important social and legal questions so that the judicial system can render critical judgements.

There are four divisions of forensic psychiatry. The first pertains to the legal aspects of general psychiatric practice, such as the civil commitment of involuntary parties, the doctrine of informed consent, the requirement to protect third parties from dangerous patients, and matters of privilege and confidentiality.¹⁶ The second division of forensic psychiatry covers the assessment of mental disability. This includes the evaluation of individuals injured on the job; of plaintiffs who, claiming injury, seek compensation from a defendant; and of individuals’ competence to perform specific acts such as making a will.¹⁷

¹⁴Henry Kellerman, *Dictionary of Psychopathology* (New York: Columbia University Press, 2009) 81.

¹⁵Gerald P. Koocher, “Foreword to Alan M. Goldstein’s, *Forensic Psychology: Emerging Topics and Expanding Roles*, New Jersey: John Wiley & Sons, 2007, xi-xii.

¹⁶Robert I. Simon, *Clinical Psychiatry and the Law*, New York: American Psychiatric Press, 1992, 125; See Appendix X for Informed Consent.

¹⁷Committee on Identifying the Needs of the Forensic Sciences Community and National Research Council, *Strengthening Forensic Science in the United States, Strengthening Forensic Science in the United States: A Path Forward* (Washington D.C.: The National Academies Press, 2009) 36, 111; Harold I. Kaplan and Benjamin J. Sadock, eds., *Comprehensive Textbook of Psychiatry*, vol. 2, 6th International ed., (New York: Williams & Wilkins, 1995) 2747-2775.

The most engaging aspect of forensic psychiatry deals with individuals who have been arrested. Major divisions of forensic psychiatry include the evaluation of competency to stand trial; the assessment of criminal responsibility and evaluations that relate to sentencing; and third, the psychological/psychiatric treatment of incarcerated individuals.¹⁸ The fourth division of forensic psychiatry is forensic child psychiatry, which includes child custody, the evaluation of children who may have been abused, and consultation regarding minors who are involved with the juvenile courts.¹⁹

“Forensic psychology and psychiatry study, evaluate, and identify mental illnesses and human behaviour to obtain legal evidence. Forensic psychiatry is a field within psychiatry in which scientific and clinical expertise is applied to legal issues in legal contexts.”²⁰ It is concerned with helping people with mental disorders who present a significant risk to the public. The field covers areas such as the assessment and treatment of mentally disordered offenders; the investigation of the complex relationships between mental disorder and criminal behaviour; and working with criminal justice agencies to support patients and protect the public. Forensic psychiatrists work alongside many other services including the police, probation officers, the courts, the prosecution service, prisons, etc.

¹⁸N. Nedopil, “The Role of Forensic Psychiatry in Mental Health Systems in Europe,” *Criminal Behaviour and Mental Health* 19/4 (2009), 224-234; Gary B. Melton, *et alii*, *Psychological Evaluations for the Courts*, 2nd ed., (New York: Guilford Press, 1998) 321.

¹⁹C.R. Bartol and A.M. Bartol, “History of Forensic Psychology,” in I.B. Weiner and A.K. Hess, eds., *Handbook of Forensic Psychology*, 3rd ed., 3-27; Paul Stuart Appelbaum and Thomas G. Gutheil, *Clinical Handbook of Psychiatry and the Law*, 2nd ed., (Williams & Wilkins, 1991) 159.

²⁰Jerry M. Wiener and Mina K. Dulcan, *Textbook of Child and Adolescent Psychiatry*, 3rd ed., (Washington D.C.: American Psychiatric Publishing, 2004) 903; R. Rosner, “Forensic Psychiatry: A Subspeciality,” *Bulletin of American Academy of Psychiatry and the Law* 17 (1989), 323-333, p. 323; Tullio Bandini and Marco Lagazzi, “La Perizia Psichiatrica nella Realtà Europea Contemporanea,” in Vincenzo Mastronardi, *Criminologia, Psichiatria Forense e Psicologia Giudiziaria: Scritti in Memoria di Franco Ferracuti* (Roma: Antonio Delfino, 1996, 39-59) pp. 39-40.

2.3. The Expert in Ecclesiastical Tribunals

There are three main points to be considered under this title, namely, 1) the role of experts in the ecclesiastical tribunals; 2) admission of experts and their tasks; 3) the expert's report and its value. Canons 1574-1581 of *CIC* and 1255-1262 of *CCEO* explain the role of experts well.

The use of experts is necessary when the law prescribes it. It is the responsibility of the judge to appoint the experts in accord with these canonical prescriptions. By way of defining the role of experts, and placing some limits on it, Augustine Mendonça wrote as follows: "...an expert is one who has the scientific knowledge of a particular subject matter and can speak on it with authority."²¹ In marriage nullity cases based on *causes of a psychic nature*, the expert service of either a psychiatrist (forensic) or a clinical psychologist is obligatory. The expert must be a neutral person without any vested interests in the given case. There are eight canons on experts (*periti*) both in *CIC* cc. 1574-1581 and in *CCEO* cc. 1255-1262. The wording in each canon is very similar.²² In a broken marriage, there could be various reasons that may be sociological, anthropological, psychological, psychiatric, moral, and so on. It is a complex area where judges sometimes lack precise knowledge or are unqualified. In such cases, judges need the help of experts²³ competent in clinical psychology, forensic psychiatry, or other related sciences to help him arrive at an objectively precise and legally just decision.

²¹Augustine Mendonça, "The Apostolic Signatura's Recent Declaration on the Necessity of Using Experts in Marriage Nullity Cases," *Studia Canonica* 35 (2001), 33-58, p. 36.

²²Craig A. Cox, "Part II: The Contentious Trial (cc. 1501-1670)," in John P. Beal, James A. Coriden, and Thomas J. Green, eds., *New Commentary on the Code of Canon Law* (Washington D.C.: Canon Law Society of America, 2001) 1655-1749, p. 1692; Pio Vito Pinto, *Corpus Iuris Canonici II: Commento al Codice dei Canonici delle Chiese Orientali* (Città del Vaticano: Libreria Editrice Vaticana, 2001) 1033-1034.

²³José Gabriel González Merlano, *El Trastorno Narcisista de la Personalidad como Causa de Nulidad Matrimonial, en la Doctrina y en la Jurisprudencia de la Rota Romana* (Buenos Aires: Pontificiae Universitatis Catholicae Argentinae, 2006) 148; Zuanzzi Gianfrancesco, *Psicologia e Psichiatria nelle Cause Matrimoniali Canoniche*, *Studi Giuridici LXXIII* (Città del Vaticano: Libreria Editrice Vaticana, 2006) 305.

2.3.1. The Role of the Expert in Ecclesiastical Tribunals

CIC c. 1574 and CCEO c. 1255 state that “The services of experts are (to) be used whenever, by a provision of the law or of the judge, their study and opinion, based upon their art or science, are required to establish some fact or to ascertain the true nature of some matter.” The services of experts must be sought in order 1) to establish some fact or 2) to discern the true nature of some matter. In those cases where the facts are well established and their meaning is truly clear, there is no need to seek the help of experts. When there is need to establish facts or clarify certain ambiguities concerning their significance, experts are to be employed.²⁴ In those cases where the law does not prescribe the service of experts, the judge may and at times must obtain the reasoned advice of experts to arrive at moral certainty.²⁵

According to Stankiewicz, the former dean of the Roman Rota, the procedural profile of the expert is still a problem of discussion in jurisprudence.²⁶ Mendonça stated that in the ecclesiastical or canonical tribunal procedure “experts are not considered as co-judges, assessors, auxiliaries or consultants of the judge, rather they are only a means of proof, that is, through their expert report, whether it be official or public (cc. 1577-1578/CIC; cc. 1258-1259/CCEO) or private.”²⁷ The expert can in no way think that

²⁴Mario Francesco Pompèdda, “Incapacity to Assume the Essential Obligations of Marriage,” in R. Sable, ed., *Incapacity for Marriage: Jurisprudence and Interpretation* (Rome: Pontificia Universitas Gregoriana, 1987) 208-210; Craig A. Cox, “Part II: The Contentious Trial (cc. 1501-1670),” John P. Beal, James A. Coriden, and Thomas J. Green, eds., *New Commentary on the Code of Canon Law*, 1693.

²⁵Ernest Caparros, Michel Theriault, Jean Thorn and Helene Aube, *Code of Canon Law Annotated*, 2nd ed., revised and updated of the 6th Spanish language ed., prepared under the responsibility of the Instituto Martin De Azpilcueta (Montréal: Wilson & Lafleur, 2004) 1234.

²⁶“La configurazione processuale del perito è però un problema ancora discusso nel giurisprudenza.” Antony Stankiewicz, “La Configurazione Processuale del Perito e delle Perizie nelle Cause Matrimoniali per l’Incapacità Psicica,” *Quaderni Studio Rotale VI* (1993), 57; Ganfrancesco Zuanazzi, *Psicologia e Psichiatria nelle Cause Matrimoniale Canoniche*, 305.

²⁷Augustine Mendonça, “Reflections on Recent Rotal Sentences Originating in the U.S: Part I,” *Forum* 10/1 (1999), 93-166, p. 143; Pio Vito Pinto,

he/she is a kind of judge. Canonical jurisprudence has taken special care to distinguish between an expert's appraisal and the final decision reserved to the judges. Both the judge and the expert make a judgement; however, the former's is juridical (on the validity of marriage) while the latter's is technical (on the statement of psychic capacity).²⁸

The role of the expert may be seen primarily in *CIC* c. 1680 and *CCEO* c. 1366, where the use of an expert is obligatory. One or more experts are to be used in marriage nullity cases involving impotence or defects of consent due to mental illness (*morbus mentis*).²⁹ In other cases, the provision of *CIC* c. 1574 and *CCEO* c. 1255 is to be observed, namely, that the services of the experts are to be used when prescribed by law or as instructed by the judge.³⁰ The expert is supposed to offer his opinion specifically on the grounds for nullity as determined by the judge, based on the rules of the science of psychiatry or psychology; "it is not sufficient on the part of experts to indicate merely the diagnosis of a [mental disorder or] personality disorder even if they do this in accord with the commonly used psychiatric manual..." Burke, *Coram*, in his judgment of 18 June 1990, insisted that the *peritia* constitutes no proof in itself of consensual incapacity but the expert's opinion is given "in order to establish

Corpus Iuris Canonici II: Commento al Codice dei Canonici delle Chiese Orientali, 1033-1034.

²⁸P.A. Bonnet, "Il Giudice e la Perizia," in P.A. Bonnet and C. Gullo, *L'Immaturità Psico-Affettiva nella Giurisprudenza della Rota Romana*, *Studi Giuridici* 23 (Città del Vaticano, Libreria Editrice Vaticana, 1990, 57-93) p. 64; Zuanazzi, "Il Rapporto tra Giudice e Perito secondo la Giurisprudenza della Rota Romana," in *id.*, *Perizie e Periti nel Processo Matrimoniale Canonico* (Tornio: Giappichelli, 1993) 149-200, p. 155; Ganfrancesco Zuanazzi, *Psicologia e Psichiatra nelle Cause Matrimoniale Canoniche*, 306.

²⁹For further reading see the commentary of c. 1680 in Craig A. Cox, "Part III: Certain Special Processes (cc. 1671-1716)," in John P. Beal, James A. Coriden, and Thomas J. Green, eds., *New Commentary on the Code of Canon Law*, 1773-1774.

³⁰Augustine Mendonça, "The Apostolic Signatura's Recent Declaration on the Necessity of Using Experts in Marriage Nullity Cases," *Studia Canonica* 35 (2001), 33-34; Augustine Mendonça, "Reflections on Recent Rotal Sentences Originating in the U.S: Part I," *Forum* 10/1 (1999), 143.

some fact or to clarify the true nature of something.”³¹ Hence, Rotal jurisprudence stresses the fact that the expert is not to substitute for the judge in any way.

In the instance of causes of a psychic nature in relation to marriage, a judge normally seeks an expert, specific, and scientific diagnosis entailing: 1) the possible presence of a grave personality disorder or psychic anomaly in the subject at the time of marriage; 2) the nature of that psychic anomaly or causes of a psychic nature; 3) the gravity of that psychic anomaly; 4) the effect of that psychic anomaly on a person’s capacities for making decisions and for consenting validly to marriage; and 5) the scientific proofs or arguments on which the expert bases his clinical conclusions. These include direct examination of the subject, clinical records, psychological tests, indications drawn from a simple reading of the acts, etc.³²

The judge must consider the opinion of the expert but he need not follow it; only the judge determines the nullity of a marriage. The competency of the expert is to be only one of the elements involved in the assessment of the competence of the persons in dispute. Nevertheless, he/she has a great responsibility to clarify areas in which the judge lacks competence. An expert report highlighting all the above aspects of mental competency or incompetency would greatly help the judge arrive at moral certitude in a given case.³³

It is also important to know the juridical value of an expert’s opinion. If an expert’s opinion is only based on the information available in the acts of the case, it has not as much value as one that is formulated on the basis of the data obtained through clinical interview and testing. In a 1992 decision, the Rotal judge Davino stated “in order to

³¹Burke, *Coram* 18 June 1990, *Forum* 3/1 (1992), 102; Said Pullicino, *coram* “Lack of Discretion of Judgement and Inability to Assume,” Metropolitan Tribunal of the Malta, 29 November 2002, *Forum* 13-14 (2002-2003), 257-284, pp. 268-269.

³²Burke, *coram*, 25 November 1993 (Los Angeles, CA), *SRR Dec.*, 85 (1993), 702-714; English translation of this sentence from *Studia Canonica* 29 (1995), 241-258, p. 246; Augustine Mendonça, “Reflections on Recent Rotal Sentences Originating in the U.S: Part I,” *Forum* 10/1 (1999), 161.

³³Augustine Mendonça, “Reflections on Recent Rotal Sentences Originating in the U.S: Part I,” *Forum* 10/1 (1999), 161; Burke, *coram*, 25 November 1993 (Los Angeles, CA), *SRR Dec.*, 85 (1993), 702-714; English translation of this sentence is in *Studia Canonica* 29 (1995), 241-258, p. 246.

establish the capacity for eliciting a true and valid matrimonial consent, the assistance of an expert is of a great help.”³⁴

2.3.2. The Admission of Experts and Their Responsibilities

CIC c. 1575 and *CCEO* c. 1256 state: “After having heard the parties and their suggestions, it is for the judge to appoint the experts or, if the case warrants, to accept reports already drawn up by other experts.” *CIC* c. 1576 and *CCEO* c. 1257 explain that experts are excluded or can be objected to for the same reasons as a witness if they are deemed incapable or unfit (*CIC* cc. 1550, 1555 and *CCEO* c. 1236). For example, the reasons which would disqualify a judge from adjudicating a case (*CIC* c. 1448 §1 and *CCEO* c. 1106) would also be reasons for excluding a proposed expert. It is the responsibility of the judge to appoint experts after consulting with the parties (including the defender of the bond and the promoter of justice, if they are involved) and after considering the names they propose. In this way, the judge decides whether to admit into evidence pre-existing expert reports.³⁵

The codes of canon law do not spell out the qualifications necessary in an expert. Clearly, lay persons may serve as experts (*CIC* c. 228 §2 and *CCEO* c. 408, §§1-2). Nothing in the law automatically disqualifies a non-Catholic or even un-baptised person from acting as an expert. The judge must determine whether a proposed expert has the background, knowledge, the experience and the wisdom to serve as an expert in a particular case, including an ample knowledge of Christian anthropology and of the sacramental nature of marriage.³⁶

³⁴Davino, *coram*, 24 February 1992, 187-188. This sentence of Pompedda cited by Davino is not found in *SRR Dec.*, 1992; Augustine Mendonça, “Reflections on Recent Rotal Sentences Originating in the U.S: Part I,” *Forum* 10/1 (1999), 130.

³⁵T.G. Doran, “Some Thoughts on Experts,” *Quaderni dello Studio Rotale* 4 (1989), 162, speaks of a greater judicial discretion in the selection of experts than in the previous legislation. Craig A. Cox, “Part II: The Contentious Trial (cc. 1501-1670),” in John P. Beal, James A. Coriden, and Thomas J. Green, eds., *New Commentary on the Code of Canon Law*, 1693; Ernest Caparros, Michel Theriault, Jean Thorn and Helene Aube, *Code of Canon Law Annotated*, 2nd ed., 1234.

³⁶Augustine Mendonça, “The Role of Experts in ‘Incapacity to Contract’ Cases (c. 1095),” *Studia Canonica* 25 (1991), 431-433; Craig A. Cox, “Part II:

While respecting the special competence of a particular expert, the judge must take care to discern whether the service of an individual proposed as an expert would be helpful to the discovery of the truth. In his allocution to the Roman Rota on 5 February 1987, Pope John Paul II seriously cautioned the judges:

Consequently the trial of cases of nullity of marriage on the grounds of psychic or psychological limitations demands on the one hand the help of experts in such subjects, who consider in accordance with their competence the nature and degree of psychic processes which impinge upon matrimonial consent and the ability of the person to assume the essential obligations of marriage. On the other hand, it does not dispense the ecclesiastical judges, in the use of expert's reports, from the duty of not allowing themselves to be influenced by unacceptable anthropological concepts that would eventually involve a misunderstanding concerning the truth of the facts and their meaning.³⁷

Rotal judge Davino cautioned the judges about utilizing expert opinions, stating that "...the judge must be careful in weighing the conclusions of experts. The acts of a case would normally contain more information than what is found in the report(s) of an expert. Therefore, a judge must weigh the expert report in the light of all the circumstances of the case." According to Davino, the judge can reject the expert's opinion in the following situations: "If, after carefully weighing all relevant information, the judge finds the expert-reports not in conformity with the facts reported in the acts, the judge can reject the conclusions of experts, even if they are all in agreement (c. 1579/CIC and c.1260/CCEO)."³⁸ However, he must have serious and sufficient reasons to do so.

The Contentious Trial (cc. 1501-1670)," in John P. Beal, James A. Coriden, and Thomas J. Green, eds., *New Commentary on the Code of Canon Law*, 1693.

³⁷John Paul II, *Allocutions to the Roman Rota*, 5 February 1987, *L'Osservatore Romano*, English ed., 23 (23 February 1987), 6, no. 2; Augustine Mendonça, "Reflections on Recent Rotal Sentences Originating in the U.S: Part I," *Forum* 10/1 (1999), 131; Pio Vito Pinto, *Corpus Iuris Canonici II: Commento al Codice dei Canonici delle Chiese Orientali*, 1033-1034.

³⁸Davino, *coram*, 24 February 1992, 187-188; this sentence of Pompedda cited by Davino is not found in *SRR Dec.*, 1992. Augustine Mendonça, "Reflections on Recent Rotal Sentences Originating in the U.S: Part I," *Forum* 10/1 (1999), 130.

In current canonical doctrine, the opinion of the expert remains only a kind of proof, a “*species probationis*.”³⁹ It is a medium or a source that allows the judge to convincingly assume the technical and scientific foundation in a given case. The psychiatric proof or report is certainly an important one, but it must be considered in conjunction with all the other circumstances and acts of the case. In *CIC* c. 1579 §1 and *CCEO* c. 1260, it is stated that “The judge is to weigh carefully not only the conclusions of the experts, even if they are in agreement, but also the other circumstances of the case.” The expert has no competency to say that the marriage is null or that the party in question could not consent to marriage validly. The judge should make this conclusion after following all the procedures prescribed by the law. The declaration of defect of consent is not a psychiatric or psychological evaluation, but pertains to the juridical category both in civil law and canon law.

In the general theoretical sense, the difference between the fact of psychological evaluation and juridical incapacity is clear, but in the practical application, there is uncertainty. The expert opinion is insufficient and remains as a mere diagnostic label, until an official declaration is made by a competent juridical authority regarding the mental competency or capacity.⁴⁰

CIC c. 1577 and *CCEO* c. 1258, §1 read as follows:

§1. Attentive to what the litigants may bring forward, the judge is to determine in a decree the individual items upon which the services of the expert must focus.

§2. The acts of the case and other documents and aids which the expert can need to fulfil his or her function correctly and faithfully must be turned over to the expert.

³⁹Gillian R. Evans, *Law and Theology in the Middle Ages* (New York: Routledge, 2002) 145; Pio Vito Pinto, *Corpus Iuris Canonici II: Commento al Codice dei Canonici delle Chiese Orientali*, 1033-1034.

⁴⁰M. J. Arroba Conde, “La Prova Peritale e le Problematiche Processualistiche,” in AA.VV., *L’Incapacità di Intendere e di Volere nel Diritto Matrimoniale Canonico* (Città del Vaticano, Libreria Editrice Vaticana, 2000) 383-410, p. 390; Ganfrancesco Zuanazzi, *Psicologia e Psichiatria nelle Cause Matrimoniale Canoniche*, 306. This part on experts is adopted mainly from the work of Ganfrancesco Zuanazzi.

§3. After having heard the expert, the judge is to determine the time within which the expert must complete the examination and produce the report.

The judge is responsible for clearly delineating the expert's task. After having heard and considered the points that the parties wish the expert to consider, the judge, through a decree, frames the questions and issues for the expert's consideration and response.⁴¹ The judge has the duty to request that the expert explain the following: 1) the existence of a psychic disturbance in the party alleged to have been incapable of consenting to marriage; 2) the nature, origin and seriousness of these disturbances; and 3) the influence of these disturbances on the process of deliberation for marriage.⁴² Within these parameters, the judge must respect the expert's competence and the methodology of his/her discipline, which must be in accordance with Christian anthropology.

The judge is to provide the expert with the materials necessary for a thorough analysis and a well-considered professional opinion.⁴³ The extent of the access to the acts which a judge gives to an expert will depend on the role the expert is asked to play. For example, an expert in document verification needs to see only the part of the acts relevant for that purpose. On the other hand, a psychological expert should have access to the testimonies, documents and other evidences collected in the course of the trial. It is also ideal that the expert be able to examine the parties. According to T.G. Doran, the

⁴¹R. Bourgon, "Proofs," in G. Sheehy, et alii, eds., *The Canon Law Letter and Spirit: A Practical Guide to the Code of Canon Law* (Dublin: Veritas Publications, 1995) 873-895.

⁴²Davino, *coram*, 24 February 1992, 188; Augustine Mendonça, "Reflections on Recent Rotal Sentences Originating in the U.S: Part I," *Forum* 10/1 (1999), 93-166, pp. 130-131; Ernest Caparros, Michel Theriault, Jean Thorn and Helene Aube, *Code of Canon Law Annotated*, 2nd ed., 1236.

⁴³Di Felice in a marriage nullity case urged caution when an expert's report was based solely on the declaration of the petitioner. Di Felice, *coram*, 6 May 1970, *SRR Dec.*, 62 (1970), 448; Craig A. Cox, "Part II: The Contentious Trial (cc. 1501-1670)," in John P. Beal, James A. Coriden, and Thomas J. Green, eds., *New Commentary on the Code of Canon Law*, 1694.

expert's opinion after the examination of the parties holds a greater value than the opinion offered without examination.⁴⁴

2.3.3. The Expert's Report and Its Value: CIC cc. 1578-1579 and CCEO cc. 1259-1260

CIC c. 1578 §1 and CCEO c. 1259 §1 on the expert report state:

Each of the experts is to prepare a report separate from the others unless the judge decrees that one report signed by the experts individually be drawn up; if this is done, differences of opinion, if there are any, are to be noted carefully. §2. Experts must indicate clearly by what documents or other suitable means they gained certainty of the identity of the persons, things, or places, by what manner and method they proceeded in fulfilling the function entrusted to them, and above all on which arguments they based their conclusions. §3. The judge can summon the expert to supply explanations which later seem necessary.

Usually, the expert draws up the report after a careful and direct examination of the person/s (spouses) themselves, their witnesses, any medical reports, the acts of the case, and other relevant evidence.⁴⁵ The expert's report is not considered as a simple consultation or juridical function but as a means of proof in the case. The expert's report is not much utilized in the direct understanding of facts, but is required in the reconstruction or interpretation of facts based on the expert's special technical and scientific competency.⁴⁶

Each expert prepares an independent report. Written reports are preferable, but oral reports are acceptable.⁴⁷ If a report is given

⁴⁴T.G. Doran, "Some Thoughts on Experts," *Quaderni dello Studio Rotale* 4 (1989), 64, indicates that the expert's service could involve a direct examination of the parties or an indirect examination through a study of the acts, but that "a *peritia* should involve both, if possible." Craig A. Cox, "Part II: The Contentious Trial (cc. 1501-1670)," in John P. Beal, James A. Coriden, and Thomas J. Green, eds., *New Commentary on the Code of Canon Law*, 1694.

⁴⁵José Gabriel González Merlano, "El Trastorno Narcisista de le Personalidad como Cause de Nulidad Matrimonial," en *La doctrina y en la Jurisprudencia de la Rota Romana*, 149-150.

⁴⁶*Quaderni di Diritto Ecclesiale, Codice di Diritto Canonico Commentato* (Milano: Ancora Editrice, 2001) 1218-1222.

⁴⁷T.G. Doran, "Some Thoughts on Experts," *Quaderni dello Studio Rotale* 4 (1989), 65; Craig A. Cox, "Part II: The Contentious Trial (cc. 1501-1670)," in

orally, a notary should be present to prepare a record of it for inclusion in the acts of the case. When multiple experts are employed, the judge may ask them to collaborate in the preparation of a single report, which, if written, each one signs. Should the experts disagree in their conclusions, they are to note and explain those differences of opinion in the report. Besides their findings, other important information must be included in the experts' report, including: 1) a description of the documentation employed in their investigation; 2) brief descriptions of the methodology employed in analysing the data; and 3) explanations of the reasons which form the foundation of the conclusions of the report. After the expert has submitted a report to the court, the judge may seek further explanation or clarification from the expert.⁴⁸

The judge is supposed to weigh the report of the experts in line with CIC c. 1579 §1 and CCEO c. 1260 §1: "The judge is to weigh carefully not only the conclusions of the experts, even if they are in agreement, but also the other circumstances of the case." §2 of both canons states: "When giving reasons for the decision, the judge must express what considerations prompted him or her to accept or reject the conclusions of the experts." While fully respecting the competence of experts, the judge cannot abdicate the responsibility for making judgement about the issues in a case. Canonical tradition considers the judge to be the *peritus peritorum*, the expert of the experts.⁴⁹ In assessing the value of expert reports, the judge must consider all the circumstances of the case. Even when several experts agree in their

John P. Beal, James A. Coriden, and Thomas J. Green, eds., *New Commentary on the Code of Canon Law*, 1695.

⁴⁸B. de Lanversin, "L'importance de can. 1578 §3, dans les Procès Matrimoniaux ("Judex peritus peritorum")," *Quaderni Studi Rotale* 4 (1989), 49-58, for a discussion of the importance of this juridical authority in understanding and weighing the conclusions of experts. Craig A. Cox, "Part II: The Contentious Trial (cc. 1501-1670)," in John P. Beal, James A. Coriden, and Thomas J. Green, eds., *New Commentary on the Code of Canon Law*, 1694.

⁴⁹Parisella, *coram*, 25 November 1976, *SRR Dec.*, 68 (1976), 463; Robert O. Bourgon, *The Presiding Judge: Present Legislation and Future Possibilities for Marriage Nullify Cases*, (Doctoral Dissertation), (Ottawa: Saint Paul University, 1997) 80; Ernest Caparros, Michel Theriault, Jean Thorn and Helene Aube, *Code of Canon Law Annotated*, 2nd ed., 1237-1238.

conclusions, judges cannot abandon their own responsibility to assess the evidence.⁵⁰

Ultimately, the court's judgement is canonical.⁵¹ Experts' conclusions remain a single proof, not the sole determinative one.⁵² Nevertheless, judges are not to act arbitrarily in dealing with expert reports. They must express their reasons for adopting or rejecting the experts' conclusions,⁵³ either in a separate decree or as part of the judicial sentence. It should be noted that the judges must give their reasons not only for rejecting the conclusions of experts, but also for accepting them.⁵⁴ All these details are essential when utilizing an expert in mental and personality disorder cases.

3. Conclusion

According to John Gunn and Pamela Taylor, "An essential component of forensic psychiatry is the engagement between psychiatry and the law."⁵⁵ This article attempted to connect forensic psychiatry and canon law by a detailed exposition of forensic psychiatry and the role of experts in both of these disciplines. There are three points in this section explaining the accountability for criminal acts and the insanity defence, forensic instruments used to assess accountability, and accountability for criminal acts. Accountability for criminal acts is an assessment of the capacity of a person to do certain acts on a person's mental capacity. However,

⁵⁰Craig A. Cox, "Part II: The Contentious Trial (cc. 1501-1670)," in John P. Beal, James A. Coriden, and Thomas J. Green, eds., *New Commentary on the Code of Canon Law*, 1695.

⁵¹John Paul II, *Allocution*, 5 February 1987, AAS 80 (1987), 1457-1458; *L'Osservatore Romano*, English ed., 23 (23 February 1987), 6, no. 2.

⁵²Craig A. Cox, "Part II: The Contentious Trial (cc. 1501-1670)," in John P. Beal, James A. Coriden, and Thomas J. Green, eds., *New Commentary on the Code of Canon Law*, 1695.

⁵³T. G. Doran, "Some Thoughts on Experts," *Quaderni Studio Rotale IV* (1989), 163; Ernest Caparros, Michel Theriault, Jean Thorn and Helene Aube, *Code of Canon Law Annotated*, 2nd ed., 1238-1239.

⁵⁴Craig A. Cox, "Part II: The Contentious Trial (cc. 1501-1670)," in John P. Beal, James A. Coriden and Thomas J. Green, eds., *New Commentary on the Code of Canon Law*, 1695-1696; Ernest Caparros, Michel Theriault, Jean Thorn and Helene Aube, *Code of Canon Law Annotated*, 2nd ed., 1236.

⁵⁵John Gunn and Pamela Taylor, *Forensic Psychiatry: Clinical, Legal and Ethical Issues*, 2nd ed., (New York: CRC Press, Taylor & Francis, 2014) XXVI.

Insanity defence is also known as Not Guilty by Reason of Insanity (NGRI). Here the court has to come to the conclusion that the person was suffering from mental illness. If mental illness is proved beyond doubt then the person may not be guilty of the offence, he/she has committed. If not, this defence will not be granted. In fact, the frequency of the declaration of nullity of marriage based upon psychiatric causes has grown so steadily in the past several years that one could be astounded at the percentage of marriages that fail for this reason.

In his address to the Apostolic Signatura on 08 November 2013 Pope Francis highlighted the importance of experts according to *Dignitas Connubii*⁵⁶ when he said: “It underscores the diligence he [judge] must employ in evaluating the questions proposed to experts, as well as the resulting opinions of the same experts.”⁵⁷ Forensic psychiatry is a clinical sub-speciality of psychiatry where psychiatry and law meet. The service of experts, especially forensic psychiatrists, is necessary in cases that deal with “causes of psychic nature.” Hence, a detailed study of CIC cc. 1574-1581 and CCEO cc. 1255-1262 was been done regarding the experts. It is important for the judges and personnel of ecclesiastical tribunals to understand forensic psychiatry well to understand better psychological problems related to marriage and the law.

⁵⁶*Dignitas Connubii*, Art. 203, §1. In causes concerning impotence or a defect of consent because of a *mentis morbum* or because of the incapacities described in c. 1095/CIC, the judge is to employ the assistance of one or more experts, unless from the circumstances this would appear evidently useless (c. 1680/CIC). Art. 209 §1. In cases of incapacity, according to the understanding of can. 1095, the judge is not to omit asking the expert whether one or both parties suffered from a particular habitual or transitory anomaly at the time of the wedding; what was its seriousness; and when, from what cause and in what circumstances it originated and manifested itself. Pontifical Council for Legislative Texts, *Dignitas Connubii: Instruction to be Observed by Diocesan Tribunals in Handling Causes of the Nullity of Marriage*, Official Latin Text with English Translation, 25 January, 2005 (Città del Vaticano: Libreria Editrice Vaticana, 2005) 151.

⁵⁷Pope Francis, “Address to Participants in the Plenary Assembly of the Supreme Tribunal of the Apostolic Signatura on 8 November 2013,” online version.