

## B. Physiological and Psychological Ability to Marry

There are persons unsuited to matrimonial co-habitation. These are eunuchs, but also persons by nature unsuited for sexual co-habitation or by illness leading up to such a status. The Code of Laws and the Ustav [Typikon] of the Spiritual Consistories do not appear to prohibit the specified persons from marriage, but allow divorce only for the inability of one of spouses after the passing of three years since the marriage was fulfilled and they say about the character of inability that it should be natural or begun before the entry into marriage<sup>1</sup> (Svod Zakonov [Code of Laws], vol. X, part 1, articles 45, 48 and 49; Ustav Dukhovnikh Konsistorii [Ustav of the Spiritual Consistory], 238, 242 and 243).

If dumb and deaf-mutes, who cannot express their consent for entry into matrimony with a known person expressed in words, come to be crowned, then priests may crown them by demanding that they express their consent by other corresponding clear signs; and after this, their marriage, crowned under such circumstances, is also considered lawful, like any other marriages (refer to the resolution of Metropolitan Philaret of Moscow Philaret, Nov. 4, 1843). Blind, found in healthy state of mind also may be crowned<sup>2</sup>, as well as those able to see, with the observance of appropriate formalities, as well as the usual marriages, under the law<sup>3</sup> (compare Rezol. Mitr. Filaret [Resolutions of Metr. Philaret], May 1, 1845 in the Dushepoleznoe Chtenie [Edifying Reading]).

Finally, neither under our church nor civil laws is it forbidden to also crown those who are sick<sup>4</sup>, when they wish that. However, if thus those who of the seriously ill demand the priest to crown them not in the church, as usual, but in the private home, then the priest should definitely refuse to do this, but in the case of

persistence by the ill to advise him to turn to the diocesan Hierarchy, and after this to act according to the instructions of this latter, as usual (Fr. Hojnatsky, p. 5). Precisely also, by explanation of the "Rukovodstvo dlia Sel'skikh Pastyrei [Manual for Village Pastors]", if one of them is illegally living together, having fallen dangerously ill and feeling the approach of death, wishes to enter into a legal marriage and by that to cover the sin, then, such a marriage cannot be done<sup>5</sup>. However, the priest can in such cases turn to the local diocesan authority (Rukovodstvo dlia Sel'skikh Pastyrei [Manual for Village Pastors] 1887, 5).

Idiots and the insane, obviously, cannot be considered capable of marriage. Yet during the reign of Peter the Great it was forbidden to allow matrimony to those not having a healthy mind from birth, capable neither by science nor in service (Ukase [Decree] of Apr. 6, 1722). The Code of active Laws for the mentally ill from birth includes those for the insane<sup>6</sup>. Marriages concluded with the mentally ill and the insane are not recognized as valid and are subject to cancellation<sup>7</sup> (Svod Zakonov [Code of Laws], vol. X, part 1, articles 5, 37, 38; Ustav Dukhovnikh Konsistorii [Ustav of the Spiritual Consistory], 205, 208).

1

On the merits of the case, physical inability for marital co-habitation is found out only after marriage as it usually consists of a personal secret of the entry to marriage, but sometimes it even happens without his knowledge. Therefore in our legislation on the specified inability it is also said not as an obstacle of entry into marriage but only as a basis for divorce. However if such inability was also officially known before marriage, then it should be thought of as an obstacle for entry into marriage, as already in the sense of marriage in its consummation, physical ability for marital co-habitation is required from both the groom and the bride. That is why, as explained in the "Tserkovniiia Vedomosti [Church News]", the specified obstacle to marriage, on the merits of case, is given to those being married themselves, although it is not under the authority of priests, however, obviously it is impossible to crown those physically not able to consummate the marriage, even though he and the bride freely selected this intention (Tserkovniiia Vedomosti [Church News] 1897, 27).

The priest can refuse to do such a marriage, without asking for permission from the diocesan authority. But if the proof of the specified inability of the one wishing to marry is not available in the official data, then in that case the priest should turn to the local bishop for written instructions.

Eunuchs are also deprived of the physical ability to consummate a marriage, but that is why it is said about the marriage of persons for other reasons not having this ability, is also laid upon eunuchs, of course involuntary eunuchs also, as they are not able to consummate marriage and speeches (refer below, about divorce).

The specified physical inability for marriage intercourse should not be mixed with the inability to bear a child. This last inability is a mystery of nature and does not depend on personal properties of the spouses is why it also does not serve as an obstacle to marriage no less than a reason for divorce.

2

The operating church canons and civil laws do not prohibit the crowning of the physically and intellectually healthy deaf-and-dumb and blind. But whether any of these can, after entry into marriage, be used by those assigned to him as incurably sick, with a lifelong grant, - this question is subject to the decision of the authority which granted the permission (Tserkovniia Vedomosti [Church News] 1896, 17; see also 1896, 29, 41; refer below, on the sufficiency of the authority into marriage).

3

The Vladimir Spiritual Consistory declared to the clergy that they should not address the diocesan authority with requests for the marriage of persons having physical defects (e. g., the blind, dumb and so forth), but priests if through search found no lawful obstacles have the right to crown such persons as in the Svod Zakonov [Code of Laws] (vol. X, article 5) which forbid marriages only to the mentally ill and insane (Vladimirskiiia Eparkhial'niia Vedomosti [Vladimir Diocesan News] 1883, 4).

4

It would be useful if priests whenever possible kept up on the development of various infectious illnesses in his parish, and by extreme measures kept those of his parishioners who are found in obvious danger from entry into marriage when they cannot completely recover. Here, in particular, the suffering should be carrying obvious signs, e. g., of venereal diseases, such as: syphilis, or putrefying eyes or gonorrhoea and so forth. The pastor is morally obligated to prevent the marriage of such persons, but thus, he should act exclusively only by exhortation of the one suffering the illness (Tserkovnyi Viestnik [Church Messenger] 1897, 45). However, in the opinion of Fr. Archpriest Hojnatsky, those suffering the specified illnesses up to recovery should not be married by the priest at all, except for cases of presentation to him of the necessary medical certificates or permission to marry from the diocesan authorities, to whom therefore those with similar illnesses should turn (Fr. Hojnatsky, p. 8). But the priest has no juridical grounds to so resolutely decide the specified cases without those special inputs from the diocesan Hierarchy on that subject.

5

The bases for not crowning the marriage of persons, who fell dangerously ill, reveal the following: 1) one of those being married (patient) cannot circumambulate in "the image of a circle", during the singing of known troparions; 2) The church cannot ask God for "fruit of the womb", "many children", an abundance of earthly blessings from the dying for it is similar to the petition of the Church for the dying person to fall below the degree of empty. Meaningless ceremonialism for the person who is found "near death", the Church finds it more pertinent to raise thoughts and feelings about the spiritual and heavenly, preparing the sick to transition into the afterlife, instead of the carnal and earthly. 3) It is forbidden to do the wedding in the house, except in cases (see below) for which the given is not concerned (Rukovodstvo dlia Sel'skikh Pastyrei [Manual for Village Pastors] 1887, 5).

6

The "Tserkovnyi Viestnik [Church Messenger]" explains that marriages of mad persons should be rejected, since, under the law and in compliance with the existence also of a morally complete marriage, the groom and bride should be of sound mind (Tserkovnyi Viestnik [Church Messenger] 1889, 6).

7

Crazy people are recognized as not having healthy judgment from their very infancy (Svod Zakonov [Code of Laws], vol. X, part 1, article 365). The insane are considered those who when madness occurs for casual reasons and consists of an illness sometimes reaching to violent fury, may do mutual harm to society and themselves and consequently demands their special supervision (ibid. article 366).