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# MARRIAGE AND CONJUGAL SEX: PAUL’S “MARRIAGE DEBT” AND KANT’S “CONJUGAL RIGHTS”

*Mark Joseph T. Calano*

## **ABSTRACT**

The Code of Canon Law states that sex is a requisite for the consummation of a marriage but that the conjugal act must be performed in a “human way.” Divided into three parts, this paper investigates the place of human sex in a consummated marriage by looking into the Pauline understanding of the “marriage debt” found in 1 Corinthians 7 and the Kantian notion of “conjugal rights.” The first part is an exegesis of Paul’s texts suggesting that a couple are obligated by a certain debt to provide for the sexual gratification of their partners. The second part discusses implications of the Kantian principle of humanity in marriage and sexual activity. For Kant, marriage is a contract that includes the exchange of rights of access to the body. By explicating Paul’s and Kant’s understanding of the relationship between marriage and sex, the paper provides a better understanding of the place and role of human sex in a consummated marriage.

**KEYWORDS:** marriage; marriage debt; conjugal rights; marital sex; dignity of persons

But from the beginning of creation, "God made them male and female." "For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh."

Mark 10:6–8, quoting Genesis 1:27 and 2:24<sup>1</sup>

On January 16, 1997, the Philippine Supreme Court declared as null and void the civil marriage of Ching Ming Tsoi and Gina Lao-Tsoi because they were unable to perform the conjugal act between May 22, 1988 and March 15, 1989.<sup>2</sup> Is the refusal of the spouse to perform his or her marriage obligation even though he or she is physically capable sufficient ground for annulment? Adolfo Dacanáy, SJ, commenting on the Code of Canon Law [C.1061], speaks of the conjugal act as a necessary requirement for the consummation of marriage. The conjugal act turns the marriage between baptized persons into a *ratum et consummatum*.

The consummation of marriage, however, does not simply require a completed copula; the Code requires that the couple perform the conjugal act between themselves in a "human manner."<sup>3</sup> What does it mean for the couple to engage in sexual intercourse in a human manner? Dacanáy answers by citing Urbano Navarrete:

First, the marital act must be done with full knowledge and awareness and freedom because of the serious theological and juridical effects attributed to it. Second, it should be done without physical force or violence, otherwise, it would not be a human act for the subdued party, nor for the aggressor. Third, the sexual act should be done in a marital spirit.<sup>4</sup>

This paper investigates how the writings of Paul of Tarsus and Immanuel Kant can help shed further light on what "human sex" means. The paper is divided into three parts. The first part is an exegesis of relevant passages in the Pauline epistle 1 Corinthians 7. The second part is a philosophical analysis of Kant's understanding of marriage and sex. The third part is an attempt to engage the understanding of Canon Law on marital sex using the perspectives of Paul and Kant.

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<sup>1</sup> All biblical references are from the New Revised Standard Version.

<sup>2</sup> Chi Ming Tsoi v. Court of Appeals and Gina Lao-Tsoi, G.R. No. 119190, January 16, 1997.

<sup>3</sup> Adolfo N. Dacanáy, SJ, *Canon Law on Marriage: Introductory Notes and Comments* (Quezon City: Loyola School of Theology, 2000), 8.

<sup>4</sup> Dacanáy, *Canon Law on Marriage*, 9–10. Urbano Navarrete's article is "De Notione et Effectibus Consummationis Matrimonii," *Periodica* 59 (1970): 619–60.

## PAULINE OPHEILE

Paul addresses questions on marriage and sexual activities in 1 Corinthians 7. There he discusses a number of issues about marriage and sexual practices: the propriety of the conjugal act within marriage (vv. 1–6), whether the unmarried should marry (vv. 7–9), divorce (vv. 10–11), and mixed marriages (vv. 12–16). He also dispenses advice to those contemplating marriage (vv. 25–36) and to widows (vv. 36–40).

The chapter opens with Paul’s reaction to the Corinthian injunction: “It is well for a man not to touch a woman” (v. 1b). This means that those who are unmarried might as well remain single, whereas those who are married should refrain from sex. (“To touch a woman” is a euphemism for “to have sexual relations with a woman.”<sup>5</sup>) In response to the Corinthian ascetics, Paul opines (in 1 Corinthians 7:1–5, 8–11, 25, 28) that the conjugal act is a meaningful part of marriage and is meaningful only within marriage.<sup>6</sup> Consequently, not only is sex permissible within marriage; it is due each partner and therefore something obligated of each partner.<sup>7</sup>

The response of Paul (vv. 2–4) asserts three balanced propositions stating reciprocal rights and duties between husband and wife:

[E]ach man should have his own wife and each woman her own husband [v. 2]. The husband should give to his wife her conjugal rights, and likewise the wife to her husband [v. 3]. For the wife does not have authority over her own body, but the husband does; likewise the husband does not have authority over his own body, but the wife does [v. 4].

These three propositions clearly show that Paul is describing a relationship of mutuality, which diverges sharply from the Jewish and Greek ethos of male

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<sup>5</sup> John Coolidge Hurd Jr., *The Origins of I Corinthians* (Macon, GA: Mercer University Press, 1983), 158–63; O. L. Yarbrough, *Not like the Gentiles: Marriage Rules in the Letters of Paul* (Atlanta: Scholars, 1985), 94–95.

<sup>6</sup> The exegesis that follows draws primarily on Victor Paul Furnish, *The Moral Teaching of Paul* (Nashville: Abingdon Press, 1979); Will Deming, *Paul on Marriage and Celibacy: The Hellenistic Background of 1 Corinthians 7*, 2nd ed. (Grand Rapids: William B. Eerdmans, 2004); and William Loader, *The New Testament on Sexuality* (Grand Rapids: William B. Eerdmans, 2012).

<sup>7</sup> While the context of Paul’s instruction is sexual “immorality” (by which he meant all sexual relations outside of the covenanted relationship of a husband and wife), to limit Paul’s instruction only in relation to avoiding sexual immorality is to misunderstand Paul. This view is corroborated by Paul’s criticism of the “heathen” who enters into marriages precisely out of “lust” in 1 Thessalonians 4:3b–5.

rights and convenience.<sup>8</sup> Further, Paul makes the conjugal act a decision of the couple. The decision to have sex is not grounded on an imperative but on the balance of the rights between each partner.<sup>9</sup> The conjugal act is not a "chore" rooted in duty. The mutuality involved in the conjugal act also extends to Paul's understanding of marriage.<sup>10</sup>

Paul's statement about mutual ownership is consistent with his statement in verses 2 and 3, and it also prepares for the advice in verse 5. For William Loader, "[h]aving mutual authority over one another presses the mutuality so far as to reach an impossible impasse without some spirit of negotiation."<sup>11</sup> The possibility of an impasse is assumed further in Paul's discussion of consent in verse 5b; Paul teaches that marriage is about mutuality, and that includes respect and responsibility in the conjugal act. Marriage is not about having authority and rights over a partner's body. Thus, while Paul speaks of marriage in terms of rights, we can only discern that he means more.<sup>12</sup> It seems that when partners feel themselves obliged to comply with their partner's sexual desires, there is an unhealthy understanding of sexual intimacy. Loader reminds us that Paul "not only affirms sexual intercourse here, without limiting its legitimacy, as others tried to do, to procreation and to an experience stripped of pleasure and desire, but assumes it has its place in a consensual context of mutual desire and want."<sup>13</sup> Paul speaks of the conjugal act as a debt (*opheile*); this debt operates within Paul's understanding of mutuality. By speaking of sexual intercourse as a debt, he constitutively brings together mutual care and concern.<sup>14</sup>

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<sup>8</sup> See G. W. Peterman, "Marriage and Sexual Fidelity in the Papyri, Plutarch and Paul," *Tyndale Bulletin* 50, no. 2 (1999): 163–72.

<sup>9</sup> E. Schüssler Fiorenza observes that the principle only applies to marital sexual relationships and not to relationships outside of marriage (*In Memory of Her: A Feminist Theological Reconstruction of Christian Origins* [New York: Crossroad, 1983], 224).

<sup>10</sup> By quoting Antipater, Musonius, Hierocles, and Plutarch, Will Deming surmises that "the closest parallels to 1 Corinthians 7:4 must also be said to come from the Stoics, and indeed, from their discussion of marriage" (*Paul on Marriage and Celibacy* 117). This need not exclude the Jewish tradition from Genesis 2:24, which Paul uses extensively in 1 Corinthians 6:12–20.

<sup>11</sup> Loader, *The New Testament on Sexuality*, 190.

<sup>12</sup> It is interesting to note that Dale Martin explains that "in 7:2 marriage is merely a prophylaxis against *porneia*; in 7:3 it is a duty or debt owned by spouses to one another; and in 7:5 it is a prophylaxis against Satanic testing" (*Corinthian Body* [New Haven: Yale University Press, 1995], 201).

<sup>13</sup> Loader, *The New Testament on Sexuality*, 191.

<sup>14</sup> See also 1 Corinthians 7:32–34.

Fitzmyer argues that the statement in 7:4 “seeks to eliminate all selfishness from this aspect of marital life.”<sup>15</sup> This is reinforced by the next verse (“Do not deprive one another . . .”), where Paul’s word “deprive” carries with it mutual consent and respect. Interestingly, Paul does not reduce the conjugal act to passionless procreation without pleasure.<sup>16</sup> Paul presents the conjugal act as a mutual obligation and not merely as an expression of love and companionship.

To understand this further, let us discuss three points about the context of Paul’s instruction on marriage. The first point concerns sexual desires and *porneia*. The general concern of Paul’s teachings in 1 Corinthians is not marriage but sexual wrongdoing. It seems that for Paul, avoiding sexual immorality is more important than espousing either celibacy or marriage.<sup>17</sup> The fundamental issue is not marriage, but the place of sex in Christian life. While he does recognize the possibility of sexual abstinence in 7:5, he writes that it is only possible when it is temporary, agreed mutually, and for the purposes of prayer.

The second point, discernible in verse 7, concerns his wish that all were single as he is. Instead of interpreting this as privileging singlehood relative to marriage, one can interpret it in relation to verses 26, 29, and 31. There Paul

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<sup>15</sup> Joseph Fitzmyer, *First Corinthians* (New Haven: Yale University Press, 2008), 280. Roy Bowen Ward claims that Paul’s concept of marriage constituted a space for the mutual satisfaction of desires. By doing so, it stands apart from Stoic ideas, such as those of Musonius. A supporter of the Augustan decrees, Musonius also promoted marriage and issued that sex be for procreation, without passion and pleasure (“Musonius and Paul on Marriage,” in *New Testament Studies* 36 (1990): 287, 284–85. In *Laws*, Plato affirms marriage and insists that sexual intercourse is only for procreation. Accordingly, he opposed all forms of ejaculation which did not serve that end as being contrary to nature (*Collected Dialogues of Plato, including the Letters*, ed. Edith Hamilton and Huntington Crane [New Jersey: Princeton University Press, 1989], 838e–839a).

<sup>16</sup> “Paul sees the lovers Adam and Eve as Christians’ prototypes, but not father Adam and mother Eve. . . . Paul’s silence about procreation as the purpose of Christian marriage is telling, given the Jewish view of marriage as an obligation for the sake of producing children, a view we might expect Paul to espouse” (Judith M. Gundry-Volf, “Male and Female in Creation and New Creation: Interpretations of Galatians 3:28c and 1 Corinthians 7,” in *To Tell the Mystery: Essay on New Testament Eschatology in Honor of Robert H. Gundry*, ed. Thomas E. Schmidt and Moisés Silva [Sheffield: JSOT Press, 1994], 114–15).

<sup>17</sup> Loader, *The New Testament on Sexuality*, 188. Fitzmyer, *First Corinthians*, 274 and 278. The context of 1 Corinthians 7 is the previous discussion in chapters 5–6, sexual immorality. Alistair Scott May thinks that 7:1 reflects Paul’s extension of his argument against prostitutes to all sexual intercourse assuming that married believers belong within the one body of Christ (*The Body for the Lord: Sex and Identity in 1 Corinthians 5-7* [London: T & T Clark International, 2004], 213–14).

speaks of an "impeding crisis" (v. 26), of the "appointed time" (v. 27), and of the world's "passing away" (v. 31). Paul's understanding of marriage must be understood in relation to the imminent *parousia*. Since Paul believes the end is drawing near, he prefers that couples "be free from anxieties" (v. 32). He shares the view expressed in Mark 12:25 that marriage will cease to exist after the Second Coming because marriage (and sex) belong to the transitory, earthly existence. Nevertheless, he assumes that marriage has a place in God's created order, and even if he does not cite Genesis 2:24, he assumes its truth. The reality of sexual immorality and the imminence of the *parousia* underpin Paul's view that marriage is a vocation.

The third point is Paul's view that marriage is a gift, a vocation. In the middle of Paul's instructions on marriage and the conjugal act is a break (vv. 17–24) containing a more universal advice: "stay in the condition in which you were when called" (v. 17).<sup>18</sup> In 1 Corinthians 7, Paul mentions "two conditions" that one could happen to be in when the call is made (i.e., the Christian vocation). One could be circumcised or uncircumcised (vv. 18–19), or one could be a slave or a free person (vv. 21–23). Brendan Byrne suggests that a substitution of the terms of the first binary could be made: Jew or Greek for circumcised or uncircumcised. If the succeeding verses of 1 Corinthians 7 is understood as dealing with relations between the sexes, then the triad of binaries visible in Galatians 3:28 (between Jew and Greek, between slave and free, and between male and female) is completed.<sup>19</sup> Regardless of the reason why Paul inserts this in the discourse about marriage, what we are sure of is how he aspires for equality in the life of Christian communities, an aspiration reaffirming his understanding of mutuality. It is also possible to read Paul's comments on marriage in relation to his project of universalism in and for Christ.<sup>20</sup>

To summarize this section, Paul asserts that husbands and wives are equal partners that share in decisions and responsibilities. They are to respect, care, and remain faithful to each other. There is a sense of mutuality which differentiates the Pauline conception of marital sex from views voiced by Plutarch and by the rabbinic sayings found in the Talmud, where marriage

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<sup>18</sup> Repeated in a slightly altered form in vv. 20 and 24.

<sup>19</sup> Brendan Byrne, SJ, *Paul and the Christian Woman* (Homebush, NSW: St. Paul Publications, 1988), 17.

<sup>20</sup> Alain Badiou, "St. Paul, Founder of the Universal Subject," in *St. Paul among the Philosophers*, ed. John D. Caputo and Linda Martín Alcoff (Bloomington: Indiana University Press, 2009), 27–38; and Slavoj Žižek, "From Job to Christ: A Paulinian Reading of Chesterton," *Ibid.*, 39–60.

is clearly under the husband's direction.<sup>21</sup> Pauline mutuality protects the marriage from being reduced to the mere satisfaction of lusts. Each partner must affirm and support the other in faithfulness and love, harmony, and concord.

A similar view of marriage and sex is discernible in and comparable with that expressed by a modern philosopher, Immanuel Kant.

## KANTIAN CONJUGAL RIGHTS

Kant opposes every conceivable sexual practice outside of marriage.<sup>22</sup> Three principles underpin Kant's understanding of marriage and sex; these principles are expressed in *Groundwork of the Metaphysic of Morals* (1785), *Lectures on Ethics* (1775–80), and *The Metaphysics of Morals* (1779).

### ***Kant's First Principle: The Dignity of Persons***

Kant's first principle is the dignity of persons. This dignity comes from their possession of free will and through their exercise of free will. Humans exhibit their dignity through their rational choice of actions in accord with their understanding of particular laws.<sup>23</sup> In contrast, nonrational beings do not have this capacity; they simply respond to laws in a mechanical manner, according to the price of conformity and non-conformity. The possession of free will informs the distinction between dignity and price; the two are incommensurable.<sup>24</sup> The totality of all prices is not comparable to a single dignity. This dignity is within humanity independent of moral or immoral choices and actions.<sup>25</sup>

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<sup>21</sup> See Plutarch, "Advice to Bride and Groom," in *Moralia*, vol. 2, trans. Frank C. Babbitt (Cambridge, MA: Harvard University Press, 1928) and Louis M. Epstein, *Sex Laws and Custom in Judaism* (New York: Ktav, 1967). The views of the ancient Romans and Jews can also be contrasted to what is expressed in Ephesians 5:21–33 and Colossians 3:18–19, which focus on marriage as social institutions.

<sup>22</sup> Michael J. Sandel, *Justice: What's the Right Thing to Do?* (New York: Farrar, Straus and Giroux, 2009), 129–32. Paul Guyer, *Kant* (London: Routledge, 2006), 276.

<sup>23</sup> Immanuel Kant, *Groundwork of the Metaphysic of Morals*, trans. H. J. Patton (New York: Harper Perennial Modern Thought Edition, 2009), 95.

<sup>24</sup> *Ibid.*, 95–96.

<sup>25</sup> Thomas Hill, "Humanity as an End in Itself," in *Ethics*, 91, (1980): 86.

Because human persons possess dignity, they should not be treated or purchased as things. Persons should never be simply a means to another person's ends; instead they should be treated not only as a means but also as an end.<sup>26</sup> By "means," Kant refers to that which "contains merely the ground of the possibility of an action whose effect is an end"; by "ends," Kant means that which "serves the will as a subjective ground of its self-determination."<sup>27</sup> The principle entails the recognition of people's capability to exercise their own will and determine their actions. In Hill's paraphrase of Kant, the human person can never be produced; humanity can only be recognized and respected.<sup>28</sup> Every human person has a dignity; it is his intrinsic and absolute value.

Dignity, Kant thought, carries with it the obligation to respect one's self and others. This obligation is manifested as self-regarding duties, which prescribe rationally determined, or free activity, and proscribe certain behaviors that deny one's and other's intrinsic value. There are two types of self-regarding duties: imperfect and perfect duties. Imperfect duties necessitate a general end but not a specific action. On the other hand, perfect duties require the prohibition of certain actions; they "forbid man to act contrary to the **end** of his nature"<sup>29</sup> and encourage him towards self-preservation. For Kant, then, perfect duties allow us to avoid degrading and devaluing our humanity. It is Kant's ideas on perfect duties that have implications on sexual behavior.

According to Kant, "A man can be his own master (*sui iuris*) but cannot be the owner of *himself* (*sui dominus*)."<sup>30</sup> Human persons, as has been asserted, are not objects that can be owned; they do not even possess themselves.<sup>31</sup> While they have proprietorship over their body, they cannot choose, destroy, or diminish their rational capacity. This means that they cannot commit suicide, be defiled by lust, or be stupefied by gluttony.<sup>32</sup> However, Kant believes that it is inevitable that a person be objectified when engaging in sex. He speaks of "an inner abhorrency and damage to morality in employing

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<sup>26</sup> Kant, *Groundwork of the Metaphysic of Morals*, 96.

<sup>27</sup> Hill, "Humanity as an End in Itself," 86.

<sup>28</sup> *Ibid.*, 88.

<sup>29</sup> Immanuel Kant, *Groundwork for the Metaphysic of Morals*, trans. Mary Gregor (Cambridge: Cambridge University Press, 1991), 216.

<sup>30</sup> *Ibid.*, 90. Italics in the original.

<sup>31</sup> Immanuel Kant, *Lectures on Ethics*, trans. Louis Infield (Cambridge: Hackett Publishing, 1981), 165.

<sup>32</sup> Kant, *The Metaphysics of Morals*, 218–22.

the [sexual] inclination”<sup>33</sup> Sex is both self-destructive and disrespectful of humanity; it is “the reciprocal use that one human being makes of the sexual organs and capacities of another.”<sup>34</sup> Kant further explains, “In [the sexual act] a human being makes himself into a thing, which conflicts with the Right of humanity in his own person.”<sup>35</sup>

### ***Kant’s Second Principle: Natural Teleology***

The second Kantian principle emphasizes the role of natural teleology in Kant’s understanding of human dignity.<sup>36</sup> Natural teleology refers to the means-ends relation that is discernible in the natural process. For Kant, the end (natural teleology) of sexual desire is the propagation of the species. Thus, Kant condemns all forms of ‘unnatural’ (that is, unproductive) sexual practices. The bases of these “unnatural” sexual practices are appetites which, for Kant, reduce people into objects of desires: “The desire which a man has for a woman is not directed toward her because she is a human being, but because she is a woman; that she is a human being is of no concern to the man; only her sex is the object of his desires.”<sup>37</sup> Sexual desires point more to one’s self than of one’s partner because “they make of humanity an instrument for the satisfaction of their lusts and inclinations.”<sup>38</sup> When a person is objectified, the moral relationship ceases, or in Kant’s words, “an object of appetite for another person becomes a thing.”<sup>39</sup> The dissonance between the sexual practice and its natural teleology is irrational.<sup>40</sup>

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<sup>33</sup> Kant, *Lectures on Ethics*, 156.

<sup>34</sup> Kant, *The Metaphysics of Morals*, 96.

<sup>35</sup> *Ibid.*, 96–97.

<sup>36</sup> Kant, *Groundwork of the Metaphysic of Morals*, 97–98.

<sup>37</sup> Immanuel Kant, *Lectures on Ethics*, 164.

<sup>38</sup> *Ibid.* It should be noted, however, that not all agree with Kant’s notion of sexual desire. Christine Korsgaard in *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press, 1996) contends, “Regarding someone as a sexual object is not like regarding him as an instrument or a tool, but more like regarding him as an aesthetic object” (194). It is also interesting to read Martha Nussbaum’s more complex understanding of objectification in her essay “Objectification,” *Philosophy and Public Affairs* 24, no. 4 (1995): 257. I also endorse Lina Papadaki, “Sexual Objectification: From Kant to Contemporary Feminism,” *Contemporary Political Theory* 6 (2007): 330–48.

<sup>39</sup> Kant, *Lectures on Ethics*, 163. See also Elizabeth Brake, “Justice and Virtue in Kant’s Account of Marriage,” *Kantian Review* 9 (2005): 61.

<sup>40</sup> Kant, *The Metaphysics of Morals*, 93–94.

***Kant's Third Principle: Love Contrasts with Sexual Desires***

The third principal Kantian idea is the distinction between love and sexual desires. Love is an authentic concern for others as persons, whereas sexual desires are only directed at the other's genitalia. While sexual impulses can accompany love, Kant believes the combination is unstable because sexual desires inevitably involve objectifying a person and degrading one's self.<sup>41</sup>

However, Kant refers to a condition where both persons' rights can be protected and the reproductive purpose of sex can be fulfilled: marriage. The argument is as follows: (1) the use of an external object depends on legitimate ownership; (2) sexual activity involves the use of a person's body; (3) the other person must be owned if he or she is to be permissibly used for the satisfaction of a person's sexual desires; (4) persons, however, cannot be owned like objects; (5) marriage makes possible moral ownership and the use of external objects, human bodies.<sup>42</sup>

The argument hinges on how Kant understands marriage. For him, it is a civil contract where a male and a female are given lifelong and exclusive ownership of each other's bodies and capabilities. Human persons are not objectified in a marriage because they give themselves, their property, and their all to each other with the force of the law in this civil contract. In giving their humanity to their partner, they simultaneously part with their own humanity and gain ownership of their partner. In short, they each remain human persons in the conjugal act.

Herman explains this as the process of "romantic blending," where "I give myself (or right over myself) and you give yourself; but since you have me, in giving yourself to me you give me back to me."<sup>43</sup> Kant himself put the matter this way:

But if I yield myself completely to another and obtain the person of the other in return, I win myself back; I have given myself up as the property of another, but in turn I take that other as my property, and so win myself back again in

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<sup>41</sup> Wood, *Kantian Ethics*, 226. Barbara Herman recognizes how Kant's understanding of sex protects human beings (especially women) from any form of degrading treatment (see "Could It Be Worth Thinking about Kant on Sex and Marriage?," in *A Mind of One's Own: Feminist Essays on Reason and Objectivity*, ed. Louise M. Anthony and Charlotte Witt [Boulder: Westview Press, 1993], 53–72).

<sup>42</sup> Herman, "Could It Be Worth Thinking about Kant on Sex and Marriage?," 53.

<sup>43</sup> *Ibid.*, 60.

winning the person whose property I have become. In this way the two persons become a unity of will.<sup>44</sup>

Kant himself explains that this process of sexual self-surrender and reclamation is only acceptable within the relationship of marriage. He is quite explicit that marriage is the only proper relationship in which sexual activity is acceptable:

Sexual union in accordance with principle is *marriage (matrimonium)*, that is, the union of two persons of different sexes for lifelong possession of each other's sexual attributes. . . .

For the natural use that one sex makes of the other's sexual organs is *enjoyment*, for which one gives itself up to the other. In this act a human being makes himself into a thing, which conflicts with the right of humanity in his own person. There is only one condition under which this is possible: that while one person is acquired by the other *as if it were a thing*, the one who is acquired acquires the other in turn; for in this way each reclaims itself and restores its personality. . . . Hence it is not only admissible for the sexes to surrender and to accept each other for enjoyment under the condition of marriage, but it is possible for them to do so *only* under this condition.<sup>45</sup>

Marriage is seen as the fundamental relationship prior to any sexual activity. It is marriage that is honored in Kant's metaphysics, not the sex act in itself. In answer, then, to the question, "Can we own our partners in marriage and therefore legitimately be in a position to use them?" Kant suggests that we can, referring to this possibility as the "right to a person akin to a right to a thing."<sup>46</sup>

Only within marriage can sex avoid the objectification of humanity that is inherent in the sex act. Thus, for Kant, only when the couple share with each other their "person, body and soul, for good and ill and in every respect," can their sexual faculties lead to "a union of human beings"<sup>47</sup> that is virtuous and where procreation remains a possibility.<sup>48</sup>

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<sup>44</sup> Kant, *Lectures on Ethics*, 59.

<sup>45</sup> Kant, "Metaphysics of Morals," 96–97.

<sup>46</sup> *Ibid.*, 95.

<sup>47</sup> Kant, *Lectures on Ethics*, 167.

<sup>48</sup> Kant, "Metaphysics of Morals," 96–99. This understanding is also discernible in chapter 3, part 3, of Jean Paul Sartre, *Being and Nothingness*, trans. Hazel Barnes (New York: Philosophical Library, 1956) and in Simone de Beauvoir, *The Second Sex*, trans. H. M. Parshley (New York: Knopf, 1952).

## THE CODE, PAUL, AND KANT

How does Paul's and Kant's understanding of marriage and the conjugal act stand in relation to Navarrete's three conditions, mentioned at the beginning of the paper, in his interpretation of the Code of Canon Law's requirement that the conjugal act be performed in a "human manner"? To answer this question, it is imperative that the three conditions be discussed first. Then we note what Paul and Kant can contribute to the matter.

The Code's first condition necessitates that the marital act be a human act.<sup>49</sup> It must be done with full knowledge, with full awareness, and with free will. Dacanáy explains the necessity of the couple's having full command of their human faculties.<sup>50</sup> That condition means that the couple must perform the conjugal act in a consensual manner.

But Paul and Kant want more. Paul preaches mutuality in marriage; mutuality assures that the conjugal act is performed in a consensual manner and also in the context of mutual desire and want. The marital act is a decision of equal partners who share in their decisions and the responsibilities that may follow from it. Mutuality, for Paul, is only possible when there is a free giving of one's self that is conscious and aware. Mutuality protects the marriage from being reduced to a relationship of lust and the partners to objects of lust; it eliminates selfishness and lust from the marital life. In this sense, mutuality is another name for universal equality within the Pauline and Christian communities that are in and for Christ.

For Kant, the human nature of the sexual act is assured only when the dignity of persons is respected. Thus, sexual activity is only acceptable between persons who recognize and respect themselves and their partners. For Kant, however, consensual sex is not necessarily a human act. That the giving of the self is free, conscious, and reflexive is insufficient grounds for the sexual act to be human. Humanity does not own him/herself; and what humanity cannot own, it can only respect and recognize. A conjugal act only becomes a human act for Kant when it is performed by and between rational persons.

The second condition of the Code necessitates that the marital act be done without physical force or violence; violence takes away freedom from

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<sup>49</sup> Thomas Aquinas speaks of the distinction between human acts (*actus humanus*) and acts of human (*actus homini*) in the *Summa Theologica*, I-II, 1,1, which the Code uses extensively (*Summa Theologica [All Complete & Unabridged 3 Parts, Supplement & Appendix, Interactive Links and Annotations]*, translated by Fathers of the English Dominican Province [Kindle edition: e-artnow, 2013]).

<sup>50</sup> Dacanáy, *Canon Law on Marriage*, 10.

the marital act.<sup>51</sup> Paul asserts that coercion cannot be used in the marital act. While he speaks of it as a marital debt, the conjugal act is the decision of equal partners based on balanced rights. This means that a partner who is being obligated to perform the act may say no. For Paul, the marital act is governed by the ideals of respect and responsibility. Marriage does not grant an obligation to have sex with a partner. Partners do not have authority over their partner's body. There is an unhealthy form of love when partners feel obligated to satisfy their partner's desires against their will. In this sense, the conjugal act cannot be without pleasure for both partners; neither can it be reduced to passionless procreation.

For Kant, physical force and violence reduce persons to objects. The objectification of persons is both self-destructive and disrespectful of humanity. Since the conjugal act is only possible between persons, the use of violence and force reduces the partner to an object and reduces the activity to sexual desire. The use of force or violence is akin to understanding the partner as an appetite; this reduces the partner to a mere body, not a person. For Kant, love alone recognizes the humanity of the other; and when there is use of violence and force, there cannot be love.

The Code's third condition necessitates that the conjugal act be done in a marital spirit. Paul teaches that the proper context of the conjugal act is in and within marriage. Within the context of marriage, sex is not only permissible, it is a mutual obligation; it is a marital debt. Love assures mutuality and the fulfillment of this marital debt. Similar to Paul, Kant thinks that sex is only possible within the marital spirit because only in marriage are persons treated as persons and not reduced to objects. This is what conjugal right means for Kant: the recognition of persons "never simply as a means, but always at the same time as an end."<sup>52</sup> Further, Kant thinks that the procreation of the species is justified, assured, and protected, and makes sense only by the institution of marriage.

## CONCLUSION

The Code of Canon Law, Paul, and Kant all assert that sexual intercourse is only acceptable in the context of marriage. Otherwise, it is objectifying and reductive. While the Code draws on the Roman Catholic Church's

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<sup>51</sup> Thomas Aquinas, *Summa Theologica*, I–II, 6, 5.

<sup>52</sup> Kant, *Groundwork of the Metaphysic of Morals*, 96.

understanding of a human act, Paul bases his claim on the notion of love and mutuality, and Kant grounds his claim on ideals of humanity and natural teleology. Regardless of the differences in the origins of their arguments, the Code, Paul, and Kant all agree that sexual intercourse can only be performed in a human manner when the dignity and the humanity of the partners are respected, recognized, and affirmed. While the Code and Paul ground dignity between the couple in their adoption as sons and daughters of God,<sup>53</sup> Kant grounds his understanding of dignity in human rationality. Further, while Paul teaches that people marry because of their vocation to love, and Kant argues that they do so for purposes of procreation; the Code beautifully combines these Pauline and Kantian insights when it speaks of marriage as an "intimate partnership of the whole life (*consortium totius vitae*)."<sup>54</sup>

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<sup>53</sup> Romans 8:2, 15.

<sup>54</sup> Adolfo N. Dacanáy, SJ, "A General Introduction to the Church Law on Marriage," in *Marriage and Human Sexuality: A Collection of Readings for Th131*, compiled and edited by Adolfo Dacanáy, SJ, and Michael Asis (Quezon City: Theology Department, Ateneo de Manila University, 2006), 192.

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