

Legitimacy of Children in the New Codex

Relationship between parents and children

Marriage being the natural source and origin of domestic society, implies, in its juridical aspect, rights and duties, not only between both spouses but also between parents and children. The immediate effect of a valid marriage is the marital bond, by its very nature perpetual and exclusive between the spouses¹, which constitutes the marriage state made up by reciprocal rights and obligations, such as the marital debt, cohabitation or community of dwelling-place, of board, bedchamber, mutual love and support. Canon 1135, of the new Codex states that "both spouses have the same rights and duties with regard to whatever constitutes the conjugal life." This equality should be understood in relation of what canon 1055 says with regards to the object of marriage: "The marriage covenant, by which a man and a woman establish between themselves a partnership of their whole life, and which of its very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children, has, between the baptized, been raised by Christ the Lord to the dignity of a sacrament."

The legal relations between the parents and their children are essentially based on paternity and filiation. These are correlative terms, for whereas paternity is the relationship of the father to his child, filiation is the relationship of the child to his father. Once this double relationship between parents and

¹ Canon 1134.

children has been established, education is to be accepted as a right of the children and as a duty of the parents. Parental obligations and the correlative filial rights are declared in canon 1136 by these words: "Parents have the most grave obligation and the primary right to do all in their power to ensure their children's physical, social, cultural, moral and religious upbringing." This obligation is imposed upon parents by the very law of nature; the Church's law merely reaffirms and enforces it.

The education of the offspring is correctly regarded as the complement of procreation, "for nature intends", says St. Thomas², "not only the begetting of offspring, but also its education and development until it reaches the perfect state of man as man, and that is the state of virtue. Hence, according to the Philosopher (*Ethic.* VIII, 11, 12), we derive three things from our parents, namely existence, nourishment, and education." Pius XI explains the same thing in his Encyclical *Casti Connubii* saying: "The blessing of offspring is not completed by the mere begetting of them, but something else must be added, namely the proper education of the offspring. For the most wise God would have failed to make sufficient provision for children that had been born, and so for the whole human race, if He had not given to those to whom He had entrusted the power and right to beget them, the power also and the right to educate them... Now it is certain that both by the law of nature and of God this right and duty of educating their offspring belongs in the first place to those who began the work of nature by giving them birth, and they are indeed forbidden to leave unfinished this work and so expose it to certain ruin."³

From the foregoing it is deduced that education is essentially based on both paternity and filiation. Parents, as such, are duty bound to educate their children and these may claim before the law their right to receive education from their parents. It is a duty and a right derived from natural law.

The education of the offspring is not the topic of this paper, neither it is, properly speaking, filiation or paternity. Our purpose is to deal with that legal quality accompanying filiation, called legitimacy or illegitimacy, as reflected in both the Church and the State's Laws.

² St. Thomas, *Summa Theologica*. Supplement. q. 41, a. 1.

³ Pius XI, Enc. *Casti Connubii*, Dec. 31, 1930: AAS, 1931, 539.

Filiation

In the social order it is of great interest to determine, in a certain and undoubtful manner, the juridical tie of a human being to those whom he owes his existence. This mutual relation is the basis for the claiming of subjective rights and the exacting of correlative obligations.

According to the principles of Christian morals, the "copula", origin of procreation, must be properly ordained according to the divine law. It is but natural, therefore, that the Church's Law and all Civil Codes maintain, though with some differences, the fundamental distinction between legitimate filiation, originated from a valid marriage, and illegitimate filiation arising from outside of lawful wedlock. Unsound doctrines and immoral tendencies however lead to confusionism on morals, especially on sexual matters, alleging or invoking the innocence of the offspring to cover up the permissive and licentious life of the parents.⁴

Starting from the fundamental distinction between legitimate and illegitimate filiation, admitted practically by all codes, children are usually classified as follows:

A. Legitimate

B. Illegitimate	{	Natural	{	Adulterous
		Spurious		Sacrilegious
				Incestuous
				Nefarious
				Simply spurious

Filiation is simply a biologic fact with deep juridical consequences, as it be according to or against the law. In general, it can be said that filiation is *legitimate* when the conception or the

⁴ Cfr. Knecht, *Derecho Matrimonial*, Madrid, 1932, p. 542, and M.G. Fernández, *La Institución Matrimonial*, Madrid, 1943, p. 242. Both authors explain how an unsound literature strive nowadays to equate the illegitimate and legitimate offspring not only socially but juridically as well, trying to cover the fault and blemish of the parents with the natural innocence of the illegitimate child.

birth of the offspring takes place during the marriage of the parents; if, however, both conception and birth take place outside lawful wedlock, the filiation is *illegitimate*.

A child is *legitimate*, when conceived in or born of a valid or putative marriage.⁵ Consequently, *illegitimate* children are those who neither were conceived in nor born of a valid or putative marriage, but outside lawful wedlock.

Natural legitimate children are to be distinguished from those who are legitimate by adoption, since the former owe their legitimacy to natural filiation while the latter owe it to the concession of law. Let us say also in passing that *legitimate* children are different also from the *legitimated* ones inasmuch as the latter are illegitimate by birth and only by concession of the law are equated to the legitimate regarding canonical effects. In other words, the *legitimate* children are such by birth, while the *legitimated* participate in the effects of legitimacy only through a legal act after their birth.

Legitimacy, juridically considered, is *fully* enjoyed when all canonical and civil effects are granted to the legitimate child; it is *partial* when only some effects are granted to the offspring, for instance, the canonical effects but not the civil ones. This happens in *morganatic* marriages.⁶

The connotation of the term *natural* does not in itself imply the idea of legitimacy nor illegitimacy. Both legitimate and illegitimate children owe their origin to generation, which is a natural fact. *Adopted* children however, without being natural are *legitimate* inasmuch as their adoption is done in conformity with the law. They are perhaps *illegitimate* by birth. But all the codes have given a peculiar connotation to the term *natural*. Thus, *natural* children⁷ have been traditionally described in the Church's law as those who were born from parents canonically capable to marry each other at the time of conception, pregnancy or birth,

⁵ Canon 1137.

⁶ Wernz-Vidal, *Ius Matrimoniale*, 1925, n. 608.

⁷ The old marriage law of the Philippines defined *natural* children as follows: "Children born outside wedlock of parents who, at the time of the conception of the former, were not disqualified by any impediment to marry each other, are natural." (Art. 269).

whereas *spurious* are those born from parents canonically incapable to marry each other from the time of conception of the offspring to its birth. The difference, therefore, between *natural* and *spurious* children is based on the juridical capability or incapability of the parents to marry each other at any moment from the conception to the birth of the offspring.

Spurious children have been classified into four different groups, namely *adulterous*, *sacrilegious*, *incestuous*, and *nefarious*. *Adulterous* children are those conceived by and born of, at least one validly married person with other than the spouse. *Sacrilegious* children are those conceived by and born of persons at least one of whom is a religious with public perpetual vow of chastity or one in sacred orders. *Incestuous* children are those begotten by and born of parents incapable of marrying each other on account of their consanguinity or affinity in the collateral line⁸. Children begotten by and born of parents incapable of marrying each other because of their consanguinity or affinity in the direct line are called *nefarious*⁹. Children begotten by and born of parents who could not marry each other on account of a diriment impediment other than the above mentioned are called simply *spurious*.

The new Code has done away with the distinction of illegitimate children in *natural* and *spurious* children, since the legal portions of the 1917 Code alluding to such distinction have been eliminated. Compare canons 1137 and 1139 of the new Code with canon 1114 and 1116 of 1917 Code. Besides canon 1051 of 1917 Code which made reference to this distinction has been also suppressed. Somewhere along this paper we will comment on these innovations.

The old legislation of the Philippines classified *illegitimate* children into three different groups, namely:

⁸ Cfr. Wernz-Vidal, *l.c.* n. 608. Some authors, like Joseph Bank, *Connu-bia Canonica*, 1959, pp. 524-525, regard as *incestuous* those who are born of parents related by *consanguinity* in the indirect line or by affinity in the direct and collateral line, and as *nefarious* only those who are born of parents related by blood in the direct line. Regatillo, *Ius Sacramentarium*, 1949, p. 680, includes under the group of *incestuous* those who are born of parents incapable to marry each other because of the impediment of *natural*, *spiritual* and *legal relationship*.

⁹ Wernz defines *nefarii*: "qui geniti sunt ab ascendentibus vel descendentibus in linea recta (*l.c.*, n. 608). Cfr. M.G. Fernández, *l.c.*, pag. 243.

a) *Natural* children, or those born outside wedlock of parents who, at the time of the conception of the former, were not disqualified by any impediment to marry each other (Art. 269); b) *natural* children *by legal fiction*, or those conceived or born of marriages which are void from the beginning, and also those conceived by parents whose voidable marriage has been already declared null and void (Art. 89); c) *spurious* who are grouped into three different classes: *adulterous*, or those born of a married person with one who is not the spouse; *incestuous*, or those born of unmarried persons who can not marry each other because of relation by blood; simply *spurious*, or those born of persons who cannot marry each other on account of impediments other than an existing marriage or blood relation, as the killing of the spouse by one of them (Art. 80, 6), or relation through subsequent marriage or adoption (Art. 80, 7, and Art. 87).

LEGITIMACY

In general, *legitimate* children are those who are considered such by law, which happens in two ways, namely by generation or by adoption. Thus, legitimate children are those who are born of a legal marriage and those who are regarded as such by law. Others are *illegitimate*.¹⁰

All legitimate children can be classified into four groups, namely:

1. Those who are *conceived* by parents joined in valid or putative marriage¹¹.
2. Those who are *born* of a valid or putative marriage¹².
3. The foundlings¹³.
4. The adopted children.

¹⁰ "Quidam filii dicuntur *legitimi tantum*, ut adoptivi sive arrogati...; alii dicuntur *legitimi et naturales*, ut nati ex legitimo matrimonio vero vel putativo sive ab initio sive ex postfacto...; alii dicuntur *naturales et non legitimi*, ut nati ex concubinis in domo" (Glossa in c. 6, X, *Qui filii sint legitimi*, IV, 17, v. *repellendus*). Cfr. Gasparri, *De Matrimonio*, II, 1932, n. 1110.

¹¹ Canon 1137.

¹² Ibid.

¹³ Benedict XIV. *Redditae Nobis*, 5 Dec. 1794, § 4. Cfr. also Gasparri, l.c. n. 1114

1. *Children conceived in a valid or putative marriage*

The Code states: "Children who are *conceived* in, or born of a valid or a putative marriage are legitimate¹⁴. The Church, therefore, considers a *valid* or *putative* marriage as the source of legitimacy and denies this quality to those who are conceived in and born of any other invalid union.

Legitimacy can be looked at from two different aspects, namely, as a natural fact and as a juridical concept. Considered as a natural fact, legitimacy is properly speaking the quality of only the offspring that is conceived by parents joined in a valid marriage¹⁵. What surpasses these limits enters already the juridical aspect of legitimacy, which after all is what interests us to study and determine because of its social implications. Considered as a natural fact alone legitimacy is not contemplated by any Code. Its concept has been expanded by human laws so as to encompass different situations of social life. This has been done in ecclesiastical and civil law as well. Thus, although all legal provisions on legitimacy spring, in one way or the other, from its natural concept, the complexity of modern human life asks for the broadening of its benefits to children who owe their existence to parents whose fault they have to burden.

Legitimacy considered in its legal aspect can be defined as the juridical quality of the offspring derived from the legal marriage of their parents, granting them certain rights before the law, for instance, the right to inherit as well as other privileges. The greater or lesser number of juridical effects derived from legitimacy as well as the determination of the rights enjoined by the legitimate children, depends on the specific laws issued by the competent authorities, both ecclesiastical and civil as the effects produced by legitimacy are canonical or merely civil respectively. The truly important thing is that a greater honor and more privileges should be given to the legitimate children than to the illegitimate ones. This is a substantial difference that human laws should always preserve.

It is well known that during the revision of the Church's law there was much discussion as to whether or not the effects of ille-

¹⁴ Canon 1137.

¹⁵ Cfr. Chelodi, *De Matrimonio*, 1947, p. 191, n. 151 ter a).

gitimacy should be retained or deleted in the new Code. Some members of the Commission highly deplored the fact that illegitimate children be considered as inferior to the legitimate ones. Such a discrimination, they said, could hardly conform to Christian charity, considering that the offspring is alien to the faulty life of the parents. Moreover, if the effects of illegitimacy are discarded from the Code, there is no logic in retaining the distinction itself between legitimate and illegitimate children. Others, however, favored the retention of this distinction since it is based on sociological, genetic and hereditary reasons. Since social conditions differ considerably from country to country, perhaps it might be left to the particular law or Conference of Bishops to issue the pertinent norms on the matter. Finally, it was agreed to suppress the difference as regards to the canonical effects, while retaining the distinction between legitimate and illegitimate children^{15-bis}.

It is said, in the first place, that *legitimate* children are those who are conceived in a valid or putative marriage. It is at the moment of conception, not at the birth when the child starts living. That is why the natural legitimacy should be attributed to the child from the conception itself¹⁶. The circumstance of being born while the marriage of his parents still exists is not an essential prerequisite. Posthumous children are legitimate as long as they *were conceived* by parents who were married.

A marriage is *valid* when it is willingly contracted, there is no diriment impediment, and it is celebrated in the prescribed form¹⁷. The legitimacy enjoyed by the offspring *conceived* in a *valid* marriage is a natural and necessary sequel of the purity of their origin. This is the only legitimacy which strictly speaking, may be called *natural legitimacy*. Any other legitimacy which may not claim this unblemished origin should be regarded as a concession of human law, i.e. juridical legitimacy. Being such, natural legitimacy is an inseparable effect of marriage, whose main purpose is the generation of children which is not allowed outside lawful wedlock. Natural legitimacy, therefore, presupposes the existence of a valid marriage.

^{15-bis} Cfr. *Communicationes*, vol. V, n. 1, 1973, pp. 76-77; 1978, p. 106.

¹⁶ BAC, *Comentarios al Código de Derecho Canónico*, II, 1963, p. 680.

¹⁷ These requisites are regarded as essential for the validity of a marriage. Cfr. cc. 1083-1123 of the new Codex.

We don't agree with Chelodi who regards the legitimacy of the offspring derived from a *putative* marriage as an inseparable effect of marriage¹⁸. This is tantamount to saying that it should also be considered as *natural legitimacy*. We believe that natural legitimacy, an inseparable effect of marriage, is an exclusive quality of the offspring *conceived* by parents joined in a *valid* marriage only. To surpass these limits is to enter the juridical realm where positive law prevails. Putative marriage is objectively an invalid marriage. It is well known that not always the *putative* marriage was considered by the Church, much less by any State, as a source of legitimacy. How, then, can the legitimacy which springs from it be considered as an inseparable effect of marriage?

Canon 1137 states that children *conceived* in a *putative* marriage are also legitimate. "An invalid marriage which has been contracted in good faith by at least one of the contracting parties is called *putative* until both parties become certain of its nullity"¹⁹. Marriage therefore ceases to be *putative* the moment both parties come to know of its nullity. *Moral certainty* about its nullity is necessary for both parties in order not to be in good faith²⁰. The offspring conceived up to that moment is legitimate. If the birth takes place after both parents know of its nullity, the children are still legitimate. And legitimacy once acquired is never lost, as Alexander III declared in the Decretals.

Two factors must concur in order that a marriage may be considered as *putative*, namely its objective nullity and the good faith of at least one of the contracting parties. When we say that a marriage is *null and void* some kind of external appearance of of marriage is presupposed, or, as canonists say, there must be some figure or semblance of marriage. As to what this figure or appearance has to be there is no unanimous opinion. Some authors hold that it is enough that the matrimonial consent be expressed externally, not precisely "in facie Ecclesiae."²¹ As a consequence, in their opinion, civil marriage among Christians has an appearance or figure of marriage. Most canonists, however, sustain that there only exists an appearance or figure of marriage when the external

¹⁸ Chelodi, *De Matrimonio*, 1947, p. 191, n. 151 ter b).

¹⁹ Canon 1061, § 3.

²⁰ Capello, *De Matrimonio*, 1947, n. 746.

²¹ De Smet, *De Sponsalibus et Matrimonio*, 1927, p. 243; M. de Arquer, *Derecho Matrimonial*, 1949, p. 144.

manifestation of matrimonial consent is given according to the prescribed canonical form, i.e. "in facie Ecclesiae"²², though the marriage be still invalid due to a substantial defect, for instance lack of delegation in the priest who solemnized it, lack of sufficient consent in the contracting parties or the existence of a diriment impediment. No marriage, then, may be considered as a putative marriage unless celebrated with some appearance of or similarity to a valid marriage. This happens only when it is celebrated under the conditions pointed out by the second opinion, i.e., when marriage has been celebrated according to the prescribed form, though its invalidity be the result of a substantial defect. The answer given on Jan. 26, 1949 by the Commission of Interpreters, favored this interpretation²³. The new Code does not regard civil marriage as an *invalid marriage* for lack of canonical form. A new paragraph appeared in the 1980 Schema where civil marriage was considered as invalid. That paragraph was deleted. This means that the Church has not changed her attitude on a civil marriage of persons bound to the canonical form.

The good faith required of at least one of the contracting parties during the celebration and at the time of conception of the offspring is a prerequisite for the offspring to be legitimate²⁴. The Decretals required already this good faith. Good faith does not cease to exist simply because one of the spouses has filed a petition to declare their marriage void before the ecclesiastical tribunal, nor because a sentence in favor of its nullity has been issued. It ceases, however, to exist in both spouses the moment the second sentence in favor of the nullity has been given and the Defender of the Bond does not appeal within the time prescribed.

The *putative* marriage was already regarded in the Decretals²⁵ as a source of legitimacy of the offspring as long as its celebration

²² Canons 1108, 1116. Cfr. Bank, *l.c.*, p. 522; Cappello, *l.c.*, n. 746. The celebration of marriage "in facie Ecclesiae" was prescribed by the Lateran Council IV (yr. 1215): cap. 3, X, *de cland. desp.* IV, 3 and later on by the Tridentine Council, Sess. XXIV. c.l. *de ref. matrim.*

²³ AAS., XL, 1949, p. 1586.

²⁴ Reiffenstuel, in tit., XVII, n. 5; Nájera, *El Código de Derecho Canónico* II, 1944, p. 372..

²⁵ "Cum inter virum et mulierem divortii (quoad vinculum) sententia canonice sit prolata (seu nullitas matrimonii sit declarata), filii eorum non debent exinde sustinere iacturam, cum parentes eorum publice *sine contradictione Ecclesiae inter se contraxisse noscantur*. Ideoque sancimus ut filii eorum, quos ante divortium habuerunt, et qui concepti fuerant ante sententiam, non minus habeantur legitimi" (c. 2, X, IV, 17; c. 3, X, IV, 3).

took place "in facie Ecclesiae". In so doing the Church deviated from the Roman Law which considered *valid* marriage as the only origin of legitimacy. It is worth noting that the Oriental Church did not give the putative marriage this effect until 1949.²⁶ The cause which motivated the Church to make this innovation seems to be the great number of diriment impediments in force in the XII century commonly unknown by marrying couples. Hence, it seemed unfair that their offspring should be punished for the ignorance of the parents²⁷. To regard their children as illegitimate would be tantamount to equating them to children born of adulterers what actually was far from being so. The motive therefore that decided the Church to grant the favor of legitimacy to the offspring born of parents joined in a putative marriage was their welfare, as well as the honor and dignity due to a marriage solemnized "in facie Ecclesiae" and the good name of the parents whose good faith was certainly beyond any doubt.

What about the offspring conceived in a doubtfully valid marriage? A distinction will be in order. If the doubt arises after the celebration of marriage on both spouses or either of them, the other being certain about its nullity, their marriage is truly *putative* and the offspring conceived in the same is *legitimate*. But if they doubted about its validity before the celebration, their marriage cannot be regarded as a putative marriage anymore for lack of good faith. They should have resolved their doubt before its celebration. The offspring conceived by them will be *illegitimate*²⁸

2. *Children born of a valid or putative marriage*

The Church's law considers as legitimate not only the offspring conceived in a valid or putative marriage but also that who is only *born* of these marriages. If the children were conceived outside of wedlock or during an illegal union, the law grants them the favor of legitimacy. By a fiction of the law, the marriage of the parents is considered as if it existed already when the off-

²⁶ Cfr. Knecht, l.c., footnote, 2787.

²⁷ Cfr. Wernz-Vidal, l.c. n. 609; BAC, *Comentarios al Código de Derecho Canónico* II, 1963, footnote 12.

²⁸ Knecht, l.c., p. 540, footnote 2787; Gasparri, *De Matrimonio*, 1933, II, nn. 1112, 1393.

spring was conceived²⁹. Even children conceived in sacrilegious or adulterous unions are legitimate if their birth takes place during the valid marriage of their parents.

The wording of canon 1137, where the conception or the birth of the offspring are considered the key points to determine their legitimacy, is worthy of a careful study. This canon states in crystal clear terms that legitimacy is a quality proper to the offspring conceived *in* or born *of* a valid or putative marriage. In other words, those children are legitimate when they were either conceived by or born of parents who at any of both moments were joined in a valid or putative marriage.

However, it would be improper and unfair to regard as legitimate all the children conceived by or born of married woman during her marriage. She can give birth to a child begotten by a man other than her husband. The offspring in this case is to be considered as illegitimate.

Foreseeing this possibility, the legislator has established in canon 1138, §2, a presumption of law³⁰ in favor of the offspring's legitimacy, which perhaps would be more appropriately called a presumption of filiation³¹, correlative to that established in §1 of the same canon in favor of paternity. According to this presumption "those children born at least after 180 days from the celebration of the marriage or within 300 days after the dissolution of the conjugal life," will be regarded as legitimate. The period of 180 days is considered as minimum for the fetus to be viable and at the same time to its having been conceived within

²⁹ This favor granted by the law to the offspring born of, not conceived in a valid marriage, appeared already in the Roman Law. The canonists of old times were not unanimous in teaching whether the conception alone or only the birth gave the offspring the legitimacy. Benedict XIV, in *Redditae Nobis*, Dec. 5, 1744 § 3 does not solve the question "ex hoc quod inventur textus textibus contrarii, et doctores doctoribus, tribunalia tribunali-bus adversavenur." However, it is beyond any doubt that the opinion in favor of the birth alone is conditioned by the Church's law to the presumption established in canon 1138, § 2, namely: "Legitimi praesumuntur filii, qui nati sunt saltem post dies 180 a die celebrati matrimonii, vel infra dies 300 a die dissolutae vitae conjugalis" (Cfr. *Smet*, pag. 242).

³⁰ Being this a presumption of law, it gives way to the truth when this is proved (canon 1585).

³¹ "En los casos en que se presume la legitimidad debe presumirse la filiación, pues sin filiación, real or presunta, no puede concebirse la legitimidad. Nadie puede ser considerado como *hijo legítimo* si no puede ser considerado como *hijo*" (BAC, *Comentarios al Código de Derecho Canónico*, Madrid, 1963, p. 680).

the wedlock. Likewise, the period of 300 days after the dissolution of marriage is the maximum period of time that a fetus can be retained in the marital womb³². This legal presumption is aimed at keeping the good name of the parents and ensuring the welfare of the offspring. Beyond that time the offspring should not be considered legitimate, unless proved otherwise. Art. 168(2) of the new Family Code of the Philippines states that "a child born after one hundred eighty days following the celebration of the subsequent marriage is considered to have been conceived during such marriage, even though it be born within the three hundred days after the termination of the former marriage."

When the conception took place before the celebration of the marriage but the birth happened 180 days after its celebration, the offspring is presumed to be legitimate, even if a diriment impediment existed at the time of conception, as long as such impediment had disappeared when the marriage was celebrated. Children conceived in adultery or sacrilege but born of a valid or putative marriage are not excepted in this regard by the new Code, and consequently they are legitimate.

If the birth takes place before the 180 days have elapsed after the celebration of marriage and the husband acknowledges the offspring as his own, the latter will be considered as legitimate, because of being born of a valid or putative marriage, though conceived before its celebration. The husband's acknowledgement is presumed to be sincere and it should profit the offspring. This acknowledgement can be either explicit or implicit. The latter is enough. The old marriage law of the Philippines gave us some examples of this implicit acknowledgement. Art. 258 stated: "A child born within one hundred eighty days following the celebration of the marriage... is conclusively presumed to be legitimate in any of these cases: 1) If the husband, before the marriage, knew of the pregnancy of the wife; 2) If he consented being present, to the putting of his surname on the re-

³² The Church's law as well of the civil codes have followed the Roman Law. Cfr. L. 12 D. *de statu hom.* I, 5: "Septimo mense nasci perfectum partum iam receptum est propter auctoritatem doctissimi viri Hippocratis, et ideo credendum est, qui ex iustis nuptiis septimo mense (182 die) natus est, iustum filium esse"; L. 29, pr. D. *de lib. XXVII*, 2: "Si quis... post mortem meam in decem mensibus proximis... natus, nata erit, haeredes sunt"; L. 3, §§ 11, 12, D. *de suis et legit. haered.* XXXVIII, 16 (Cfr. Wernz-Vidal, l. c., n. 613).

cord of birth of the child; 3) If he expressly or tacitly recognized the child as his own." In all these cases there is at least an implicit admission of paternity on the part of the husband. Consequently it should be considered as an implicit waiving of his right to prove the physical impossibility of access to his wife. The presumption of his paternity mentioned in canon 1138, §1, will therefore stand valid as it is confirmed by his implicit acknowledgement, and the offspring should be regarded as legitimate, as born in a valid or putative marriage.

What about the case when there is a legal presumption in favor of the paternity of two different persons? The husband of the mother may acknowledge the child born within 180 days after the celebration of marriage according to Art. 258 of the old marriage law of the Philippines, who is simultaneously acknowledged by another man who affirms having maintained relations with the mother before the celebration of her marriage. There are two conflicting presumptions in the case. Art. 277 of the same law presumed the paternity of the man who acknowledged him as his own, and Art. 258 considered him legitimate as begotten by the husband of the mother. It seems but natural that the latter presumption should prevail, since Art. 220 stated: "In case of doubt, all presumptions favor the solidarity of the family. Thus, every intendment of law or fact leans toward the validity of marriage, the indissolubility of marriage bond, the legitimacy of children..."

A different case would be if the husband refuses to acknowledge the child as his own. In such case, the child should be considered as illegitimate, unless the paternity of the husband be well established through a public document³³, or a scientific test. This case is not covered by the presumption established in canon 1138, §2 in favor of filiation or legitimacy. Otherwise, the crime

³³ Canon 877, § 2. Article 172 of the new Family Code of the Philippines states: "The filiation of legitimate children is established by any of the following.

(1) The record of birth appearing in the civil register or a final judgment; or

(2) An admission of legitimate filiation in a public document or a private hand — written instrument and signed by the parent concerned.

In the absence of the foregoing evidence, the legitimate filiation shall be proved by:

(1) The open and continuous possession of the status of a legitimate child; or

(2) Any other means allowed by the Rules of Court and special laws".

of fornication on the part of both parents would be presumed against the aphorism: "Nobody should be presumed evil unless proven to be such."

If it is not correct to say indiscriminately that the offspring born *during* a valid or putative marriage is legitimate, it can be said as well that it is not correct either to consider the offspring born after the dissolution of conjugal life as illegitimate. Canon 1138 §2 presumes the legitimacy of "children born within 300 days after the dissolution of conjugal life." The so-called *posthumous* children, therefore, are legitimate too. The offspring, however, born beyond the ten months is to be regarded as illegitimate³⁴.

A conflict of paternities, not foreseen and provided for by the Code, is likely to happen in regards to some posthumous children. If a widow marries again immediately after the death of her husband and gives birth to a child before the 300 days being elapsed but after 180 days that follow the celebration of the second marriage, the child should undoubtedly be considered as legitimate. The question now is who of the two husband is the father of the child. The presumption established in canon 1138, §1 does not solve the problem. It favors the paternity of both equally. In such a case we believe that the presumption of law being insufficient to determine the paternity, the presumption of fact should be resorted to in order to ascertain the filiation and legitimacy of the offspring. Since this uncertain situation has been created by the second husband, he should be presumed to be the father to the child^{34-bis}.

The foregoing uncertainty was discarded in the Roman Law which forbade the widow to marry again within the year that followed the death of the husband³⁵. The old marriage law of the

³⁴ The old Code of the Philippines sustained the illegitimacy of the offspring born after 300 days of the dissolution of marital life. The marriage law in force up to 1987, however, had no presumption whatsoever. Art. 261 stated: "There is no presumption of legitimacy or illegitimacy of a child born after three hundred days following the dissolution of the marriage or the separation of the spouses. Whoever alleges the legitimacy or the illegitimacy of such child must prove his allegation." The new Family Code says in Art. 169: "The legitimacy or illegitimacy of a child born after three hundred days following the termination of the marriage shall be proved by whoever alleges such legitimacy or illegitimacy".

^{34-bis} Cfr. Nájera, *l.c.*, p. 374.

³⁵ Digest. 1. 3, t. 2, leg. 1, 2.

Philippines, Art. 84, had the following provision to this effect: "No marriage license shall be issued to a widow till after three hundred days following the death of her husband, unless in the meantime she has given birth to a child." In the Church's law there is no provision on the matter. The old marriage law of the Philippines was more accurate and solved a possible confusion about the paternity, though not entirely. It was still possible that a widow, notwithstanding the preceding norm, got a marriage license and married again before the period of 300 days has elapsed. In such case the norm established in Art. 259 of the old marriage law applied. "If the marriage is dissolved by the death of the husband, and the mother contracted another marriage within three hundred days following such death, these rules shall govern: 1) A child born before one hundred eighty days after the solemnization of the subsequent marriage is disputably presumed to have been conceived during the former marriage, provided it be born within three hundred days after the death of the former husband; 2) A child born after one hundred eighty days following the celebration of the subsequent marriage is *prima facie* presumed to have been conceived during such marriage, even though it be born within the three hundred days after the death of the former husband." In the situation under discussion there were therefore, two different presumptions, that should give way to actual facts if these were proved, namely: 1) The offspring born within the 180 days after the celebration of the second marriage was presumed to be begotten by the first husband, not by the second. However, the fact that the second husband consented in giving the child his surname and registers him under his name or acknowledges him expressly or tacitly as his own child was enough proof to make his paternity prevail over the paternity of the first husband, especially if the child was premature and the blood test pointed to the unlikelihood of the latter being the father. 2) The offspring born after 180 days that follow the celebration of marriage was presumed to be the child of the second husband. This presumption, however, could be supplanted in the following ways: a) by showing the physical impossibility of his access to the wife during the time of conception; b) if the mother had declared her pregnancy when the first marriage was dissolved, as stated in Art. 260 of the old marriage law; c) if the

dead *husband* had declared the pregnancy of the widow in a trustworthy document; d) if the blood test showed that the child and the second husband were not related.

The new Family Code, however, had reordained the whole matter and its Art. 168 reads as follows:

"If the marriage is terminated and the mother contracted marriage within three hundred days after such termination of the former marriage, these rules shall govern in the absence of proof to the contrary;

(1) A child born before one hundred eighty days after the solemnization of the subsequent marriage is considered to have been conceived during the former marriage, provided it be born within three hundred days after the termination of the former marriage;

(2) A child born after one hundred eighty days following the celebration of the subsequent marriage is considered to have been conceived during such marriage, even though it be born within the three hundred days after the termination of the former marriage."

When the marriage has been declared null and void, the case is similar to that of a putative marriage, in which at least one of the contracting parties is in good faith. What has been said regarding the offspring *conceived in or born of* a putative marriage applies also the offspring of a marriage that has been declared invalid. Those children who were conceived by or born of the spouses before the declaration of nullity are legitimate; those, however, who after said declaration might be begotten or conceived by them are illegitimate.

What to say about the offspring born after the legal separation of the spouses is effected? In *legal separation* the marital bond remains intact. By virtue of this fundamental distinction between legal separation and dissolution of conjugal life, it is not proper nor fair to consider as adulterous the offspring born of a married woman legally separated from her husband. There is no presumption whatsoever established by law in this case. At any rate, if the husband acknowledges the offspring as his own,

the latter should be regarded as legitimate as conceived in and born of a legal marriage. The difficulty arises when the husband does not acknowledge the offspring, in which case a distinction will be in order. If the legal separation was decreed by the competent authority and it was actually effected, the presumption established in canon 1138, §2 about the 300 days that follow the dissolution of the conjugal life should apply here too³⁶. It is assumed that the spouses did not cohabit after the decree of separation was issued. Of course this presumption gives always way to the proof in contrary. However, if no intervention of the competent authority took place in the separation of the spouses, which was effected on their own accord, the presumption is in favor of the legitimacy of the offspring born during the separation. To destroy such presumption the husband refusing to acknowledge the offspring as his own has to prove with evident arguments that he is not the father. This can be done by showing that during the conception of the child it was impossible for him to have access to his wife as he was abroad³⁷, or that he was impotent at that time.

Summing up, we can group all natural legitimate children as follows:

- 1) children *conceived and born* in a *valid* marriage;
- 2) children *conceived and born* in a *putative* marriage;
- 3) children *conceived* by parents *validly* married, though born after the marriage dissolution;
- 4) children *conceived* in a *putative* marriage, though born outside the marriage;
- 5) children *born* in a *valid* marriage, though *conceived before* the same;
- 6) children *born* in a *putative* marriage, though *conceived before* the same.

³⁶ Cfr. Blat, *Comm. Text. Iur. Can.*, 1. 3, p. 1a, n. 523.

³⁷ BAC, *Comentarios al Código de Derecho Canónico*, II, footnote 15, p. 682.

Presumption of Paternity

It is obvious that legitimacy is based on filiation. No child can be considered as *legitimate* unless he is acknowledged by law as the child of parents legally joined in marriage. In other words, no child is regarded as legitimate unless it can be proven who his parents are. Unfortunately sometimes it is difficult, even impossible, to point out the persons to whom a human being owes his existence, especially the father. Cuyacius said: "The mother is easily known, because usually there are witnesses or attendants to the birth; but the father is only presumed, since there is no witness to the conception"³⁸. It can be shown that a man cannot be the father of a child in view of physical impossibility of his access to the mother of the child; but it is impossible to prove with evidence that a child has been conceived by a certain man. This uncertainty is greater when the mother has maintained illicit relations with several men.

In view of this impossibility of pointing out with certainty the paternity which is the basis to determine the juridical condition of the offspring, the legislator wisely has established a presumption of paternity in order to solve all doubts and controversies on the matter. This presumption was formulated for the first time by Paulus, a Roman jurisconsult, in the following terms: "The mother is always certain, even if she conceives illegitimately; the father, however, is he whom legitimate marriage points out as such"³⁹. This presumption is based on the nature of marriage, on what ordinarily happens, and on what should happen according to the law. The Church has accepted this presumption in her legislation. Canon 1138, §1 says: "The father is he who is identified by a lawful marriage, unless by clear arguments the contrary is proven." Consequently, the husband of the woman who gives birth to a child is presumed to be the father, unless the contrary be proved by conclusive arguments. The reason behind this presumption is that the use of marital rights is presumed

³⁸ "Matrem scimus, patrem credimus, quia partus sunt testes et inspectores certi, conceptus nulli sunt arbitri" (Comm. in Dig. 1. 2, t. 4, leg. 4). Cfr. Nájera l.c., p. 373.

³⁹ "Mater semper certa est, etsi vulgo conceperit: pater vero is est quem iustae nuptiae demonstrant" (Dig. 1. 2, t. 4, leg. 5). Cfr. Nájera, l.c., p. 373.

as long as the spouses have mutual access to each other, unless the contrary is proved. Logically the paternity of the husband should be presumed in regards to the child born of his wife.

This presumption in favor of the paternity of the husband is undoubtedly reasonable. It assumes the legal origin of the offspring, unless the contrary be proved. In fact it is based on what ordinarily happens, the contrary being rather unusual. The presumption tends obviously to favor the offspring, who is considered as legitimate, sharing the juridical status of the parents. It safeguards the sanctity of matrimony, the honest and good name of the parents, domestic peace and harmony, and the welfare of society⁴⁰. Unless all doubts about the paternity of the husband are entirely dissipated, this presumption is to be sustained. It is so strong that neither the fact of having the wife committed adultery, nor her conviction or confession, even under oath at the point of her death, nor the declaration of her accomplice⁴¹ can destroy such presumption, unless such evidence against it is drawn from their testimonies that the husband's paternity be really untenable⁴².

The Family Code of the Philippines has the following proviso in this respect: "Art. 167. The child shall be considered legitimate, although the mother may have declared against its legitimacy or may have been sentenced as an adulteress." The reason behind this proviso is obviously the welfare of the offspring, who must be defended against possible mean outbursts, intrigues and machinations between the parents. Besides, adultery does not discard the possibility of the husband being the father of the child if he has access to his wife during the period when conception took place. The wife herself who maintained illicit relations with a man other than her husband might not know who is the real father of the child she has conceived. As long as her

⁴⁰ Cfr. CC., Aug. 9, 1884: ASS, XVII, p. 386.

⁴¹ BAC, l.c., pag. 680; Cappello, l.c., n. 748; Wernz-Vidal, l.c., n. 613. "Allegans propriam turpitudinem fidem non meretur" (Decretal., 1. 3, t. 24, c. 8; 1.4.D. de servo pignatori dato VII, 8). It is preferable that an illegitimate child be considered as legitimate than to regard as illegitimate an actual legitimate. In the former case a favor is granted, in the latter an injustice is committed. Cfr. Nájera, l.c. p. 374.

⁴² SRRD, 24, 1932, 29. 279; Knecht. l.c. p. 540; Vlaming-Bender, *Praelectiones Iuris Matrimonii*, 1950, p. 482; Gasparri, l.c. n. 1113).

husband has had access to her, he is presumed to be the father of the child. Only the physical impossibility of access to her during the period of conception can be invoked by the husband if he does not acknowledge the child as his own.

Proof against the paternity of the husband

Mention of the physical impossibility of access to the wife has several times been made in regards to overruling the legal presumption in favor of the paternity of the husband. Is the physical impossibility of access the only way to destroy such a presumption? Canon 1138, §1 states that "evident proofs to the contrary" are needed. In other words, convincing proofs should be adduced in order to show that the husband is not the father of the child born of his wife. The Codex is silent as to which these proofs are. In view that there is no concrete legal provision, we believe that the proofs that may defeat the presumption of the paternity of the husband may be classified in two different groups: a) proofs based on public and evident facts; b) proofs attested by scientific conclusions or findings.

a) The public and evident facts that may be adduced against the presumption are:

1) The birth of the offspring within the 180 days that follow the celebration of the marriage or after the 300 days after the dissolution of the conjugal life. If the husband refuses to acknowledge the offspring, there is no presumption of paternity, and the child is to be considered as illegitimate.

2) The fact that the husband could not have physical access to her wife during the whole period of conception is enough proof that he is not the father of the child. The period of conception extends from between the 180th to 300th days prior to the birth of the child.

The approximate date of conception can be determined through a scientific test. The maturity and development of the child depends on the time he has remained in the maternal womb. If the husband has no access to her wife at the time the child was conceived, because he was abroad, he cannot be considered as

the father of the child, and the latter will be regarded as illegitimate.

The old marriage law of the Philippines admitted this way to overrule the presumption of paternity when it stated in Art. 255: "Against this presumption no evidence shall be admitted other than that of the physical impossibility of the husband's having access to his wife within the first one hundred and twenty days of the three hundred which preceded the birth of the child. This physical impossibility may be caused: . . . 2) By the fact that the husband and wife were living separately, in such a way that access was not possible."

The Family Code of the Philippines says in its Art. 166: "Legitimacy of a child may be impugned only on the following grounds:

(1) That it was physically impossible for the husband to have sexual intercourse with his wife within the first 120 days of the 300 days which immediately preceded the birth of the child because of:

(a) the physical incapacity of the husband to have sexual intercourse with his wife;

(b) the fact that the husband and wife were living separately in such a way that sexual intercourse was not possible; or

(c) serious illness of the husband, which absolutely prevented sexual intercourse.

(2) That it is proved that for biological or other scientific reason, the child could not have been that of the husband, except in the instance provided in the second paragraph of Art. 164; or

(3) That in case of children conceived through artificial insemination, the written authorization or ratification of either parent was obtained through mistake, frauds, violence, intimidation or undue influence."

It should be noted that the presumption sustained by the civil legislation, though mainly based on the non-cohabitation of the spouses, cannot be sustained if the spouses had mutual access to

each other. Obviously, non-cohabitation is not proof enough to defeat the presumption in favor of the paternity of the husband. Living separately the spouses can still have access to each other and use their marital rights. As long as this access is possible, the presumption in favor of the paternity of the husband stands valid. Thus, in practice only the physical impossibility of access may defeat the presumption established by the law.

Only the *physical* impossibility of access is considered as a proof of non-paternity. *Moral* impossibility is not enough. Thus, a deep and lasting enmity between the spouses does not constitute enough proof. Though the use of marital rights is not probable in such circumstances, it is not impossible. The presumption of paternity of the husband therefore stands valid. The legal separation itself does not constitute physical impossibility of access, since the reconciliation of the spouses is always possible. Moral impossibility, therefore, is not enough ground to prove the non-paternity of the husband, though it can help in proving it.

It should be noted that the impossibility of access is to be understood as having taken place during the marriage, not before its celebration. Thus, the husband who proves his physical impossibility of access to his wife during the 20 days that followed the celebration of marriage cannot be presumed the father of the child born only 200 days after said celebration. It does not matter whether he had access to her or not before the marriage. The law cannot presume his access prior to the marriage celebration, and consequently his paternity is neither presumed.

By physical impossibility of access to the wife the civil legislation understands not only the material separation of the spouses during the period of conception, but also *impotence* as well as *serious illness*. Art. 255 of the old marriage law says: "This physical impossibility may be caused: 1) By the impotence of the husband; 2) By the fact that the husband and wife were living separately, in such a way that access was not possible; 3) By the serious illness of the husband." Impotence refers to the inability to perform the acts suitable for generation. The serious illness should be of such a nature as to make the use of the marital rights impossible.

What about sterility? Can it be adduced to disprove paternity? Undoubtedly the husband who is actually sterile cannot be regarded as the father of the offspring born of his wife. But again, when can it be said with certainty that he is actually sterile? It is not easy to answer. Medical science assures us that men who are usually regarded as sterile may at times become fathers. For this to happen it is enough that only one of the spermatozoa be able to impregnate the female ovum. Practically there is no absolute certainty as to when this can happen and consequently it cannot defeat the presumption in favor of the paternity of the husband.

b) The second kind of proofs against the paternity of the husband is made up by the scientific test through which the relation or non-relation of two persons is established. In regards to paternity and filiation there are two kinds of proof, namely medical and ethnological⁴⁸.

1) According to medical scientists there are four types of blood transmitted from parents to their children. Though the identical type of blood does not show the origin of one person from another, the difference in blood type, however, points out to the non-relation of two persons. It is, therefore, a negative proof, since only the non-relation between them is established. Thus the fact that a married woman's child has no similarity in blood type to her husband, is sufficient proof that the latter is not the father of the child. The blood identity, however, does not necessarily show the paternity.

2) The progress of the ethnological science can help in maintaining or defeating the legal presumption of paternity. The old marriage law of the Philippines made express mention of this kind of proof in Art. 257: "Should the wife commit adultery at or about the time of the conception of the child, but there was no physical impossibility of access between her and her husband as set forth in Art. 255, the child is *prima facie* presumed to be illegitimate if it appears highly improbable, for ethnic reasons, that the child is that of the husband. For the purpose of this article, the wife's adultery need not be proved in a criminal case."

⁴⁸ Cfr. Bank, *L.c.*, p. 523-524.

Notwithstanding the possibility of access of the husband to her wife, therefore, the child born of the latter was *prima facie* presumed to be illegitimate if two factors concur, namely, if the wife had committed adultery during the period of conception and if the origin of the offspring from the husband appears to be quite improbable due to ethnologic reasons. A typical case of this would be the birth of a negro child in a marriage of a white couple. Once the adultery of the mother with a negro during the period of conception is proved, the child is *prima facie* presumed to be illegitimate. But it may be asked: what if the accomplice were also a white and the child born be a negro? Would the latter still be considered as illegitimate because of the adultery of the mother and the improbability of her husband being the father? We think that in such a case the presumption in favor of the paternity of the husband stands valid. Besides, it should be borne in mind that it is not infrequent to observe that a child resembles characteristics of ancestors that seemed to be entirely forgotten in the family tree.

The "evident arguments" mentioned in canon 1138, §1, able to defeat the presumption of paternity, should not be limited to the above mentioned alone. Suppose that after 181 days that followed the celebration of marriage the wife gives birth to a child who appears to be perfectly mature and well developed. Likewise, suppose that on the 229th day after the dissolution of her conjugal life a woman gives birth to a child who is premature needing the incubator to survive. If the husband or his heirs refuse to acknowledge the child, are not these circumstances enough argument to defeat the presumption in favor of paternity established by law? We sincerely believe they are. The rigid interpretation of canon 1138, §2 in favor of filiation and legitimacy might result in serious breaches of justice. A widow without children might seek a pregnancy from another man in order to inherit from her deceased spouse. In such cases, a scientific test should be admitted in order to defeat the presumption of the husband's paternity. The old marriage law of the Philippines contained some provisions on this matter which should be borne in mind. Art. 260 stated: "If after a judgment annulling a marriage, the former wife should believe herself to be pregnant by

the former husband, she shall, within thirty days from the time she became aware of her pregnancy, notify the former husband or his heirs of the fact. He or his heirs may ask the court to take measures to prevent a simulation of birth. The same obligation shall devolve upon a widow who believes herself to have been left pregnant by the deceased husband, or upon the wife who believes herself to be pregnant by her husband from whom she has been legally separated."

The concept of legitimacy referred to in canon 1137 is obviously a *juridical* concept, more ample than the idea of legitimacy taken in its *natural* aspect. The *natural* legitimacy is a quality proper to the offspring *conceived* in a valid marriage. The *juridical* legitimacy is extended to the offspring who is *conceived* in a putative marriage or *born* in a valid or putative marriage. This leads us to say that the *juridical legitimacy* as depending on the positive law cannot be conceived as an inseparable effect of marriage. Actually its effects are enlarged, restricted and even denied by human laws.

Foundlings

What to say about the foundlings, i.e. children whose parents are unknown? Are they to be considered legitimate or illegitimate? The Codex is silent on this matter. Hence canonists are not unanimous about it. Some hold that the foundlings should be presumed illegitimate, because illegitimate children usually have an unknown origin. In human affairs we judge according to what ordinarily happens. The majority of authors, however, consider them as legitimate, since the illegitimacy of origin is a fact which should be proved.⁴⁴ The fact that they are foundlings does not prove that their origin is illegal. As long as there is any doubt about it, they enjoy the favor of the law.⁴⁵ We subscribe to this opinion as more reasonable, and it should be sustained in practice.⁴⁶ This question is practical only in regards to the canonical effects of legitimacy. Hence, the Sacred Roman

⁴⁴ Cfr. Knecht, *Derecho Matrimonial*, 1932, p. 540, footnote 2789.

⁴⁵ "Iudex debet in bonum et commoda prolis propensus esse" (Benedict XIV, *Redditae Nobis*, dic. 5, 1744 § 4).

⁴⁶ Cfr. Gasparri, *l.c.*, n. 1114; Chelodi, *l.c.*, n. 150; Capello, *l.c.*, n. 750.

Rota in its decision of March 11, 1912, held the opinion that the foundling who wanted to be promoted to the clerical state should be dispensed from the irregularity *ad cautelam*.

Adopted Children

Adoption is defined as "the juridical act which creates between two persons a relationship similar to that which results from legitimate paternity and filiation."⁴⁷ As a rule, adoption tends to benefit both the adopting person and the adopted child. The former finds in adoption the experience of paternal joy and the latter is given the consideration and protection of a legitimate child.

Adoption is similar to natural filiation in the sense that adoption gives the adopted child the status of a child born in lawful wedlock. However, the differences between adoption and natural filiation are deep and fundamental: 1) Natural filiation is the relationship of the child to his parents based on generation. Adoption is a relation between two strangers, not related by blood. 2) Filiation is a biological process of nature, while adoption is created by law through a judicial decree; 3) Filiation is a relationship of the child to both parents, father and mother, while adoption may exist between the adopted child and one parent alone. 4) Filiation gives the child the status and rights of a legitimate or legitimated child in relation to the parents and other relatives, while the relationship created by adoption exists only between the adopting and the adopted, not other relatives.

The new Code of Canon Law has a new canon (can. 110) on adopted children. It reads as follows: "Children who have been adopted in accordance with the civil law are considered the children of that person or those persons who have adopted them"⁴⁸.

⁴⁷ Cfr. Tolentino, *l.c.*, p. 637.

⁴⁸ The Family Code of the Philippines states: "For civil purposes, the adopted shall be deemed to be a legitimate child of the adopters and both shall acquire the reciprocal rights and obligations arising from the relationship of parent and child, including the right to use the surname of the adopters" (Art. 189 (1)).

The Church considers legal adoption as a matrimonial diriment impediment. The new Code deflects considerably from the 1917 Code in this regard. While the 1917 Code considered legal adoption as an impedient or diriment impediment according to the local legislation, the new Code regards it always as a diriment impediment irrespective of the local legislation. Likewise, the Church's law does not conform to the legal adoption as to the extension of the impediment. The ecclesiastical impediment is worded as follows: "*Matrimonium inter se valide contrahere nequeunt qui cognatione legali ex adoptione orta, in linea recta aut in secundo gradu lineae collateralis conjuncti sunt.*"⁴⁹

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⁴⁹ Canon 1094.