

Annulment:

The Process and its Meaning

By Patrick Lagges, JCD

For some, it is a source of healing; for others, a source of scandal. For most, it remains a dark, murky process that is heard about only through rumor and gossip.

The subject of declarations of nullity in the Roman Catholic Church has been a source of misunderstanding for many Catholics, especially those who grew up in the Church prior to the Second Vatican Council. For many people with a traditional Catholic education, annulments were rarely, if ever, obtained, and then only for the most serious reasons. Marriages which produced children or lasted for any length of time were believed to be incapable of being declared null. Much of that had to do with the Church's teaching about the nature of marriage. With the advent of the Second Vatican Council, however, that teaching was re-examined and formulated in a different way.

An Unfortunate Choice of Terms

To say that the Church annuls a marriage is not quite correct - for several reasons. First, the term "annulment" implies that the Church is doing something to a marriage. In reality, by granting an annulment, the Church is simply declaring something about a marriage. It says that some key element was missing from the very beginning which rendered the marriage invalid.

Second, the term "annulment" implies that a relationship is being denied or done away with. This is the source of most people's question: "How can you deny that our marriage ever existed?" Once again, declaration of nullity does not mean this. The Church, or anyone else, could never deny that a relationship existed. At the very least, there is a civil document and a Church document that state that these two people joined themselves together on a certain date and in a certain place. However, in declaring a marriage null, the Church states that something was there in the beginning which prevented a true marriage in the first place. Although a relationship resembled a marriage and may have produced children (who, according to Church law, are considered legitimate, there was some key element missing that prevented a real marriage from taking place.

What is a "True Marriage?"

The Church's description of a "true marriage" has changed in the wake of the Second Vatican Council. Prior to the Council, the Church described marriage as an exchange of rights. Both parties were to bind themselves to the right of their partner to sexual intercourse, to the procreation and education of children, to the permanence and indissolubility of the union, and to fidelity to their spouse. A marriage could be declared null only if something impeded the exchange of rights: if the person excluded the right to sexual acts proper to the procreation of children or the right to permanence or fidelity. Marriages could be declared null if one of the parties entered into the union placing some sort of condition on their consent, was forced into the marriage, or was in error about the person they were marrying. In addition, marriages could be dissolved if they had not been consummated or if one or both parties had not been baptized.

In the Second Vatican Council, however, the Church's description of marriage changed. Instead of considering marriage as an exchange of rights, it was talked about as an exchange of persons. In Christian marriage, the parties give and accept each other in a permanent, faithful, fruitful union which is to mirror Christ's relationship to the Church.

Thus, the Council spoke of marriage as an "intimate partnership of life and love," and referred to the marriage covenant rather than the marriage contract. It described marriage as ". . . a means by which a man and woman render mutual help and service to each other through an intimate union of their persons and of their actions; by which they experience their oneness and attain to it with perfection day by day"; and by which "they increasingly advance their own perfection, as well as their mutual satisfaction and hence contribute jointly to the

glory of God." (These quotations are from paragraph 48 of the *Pastoral Constitution on the Church in the Modern World, Gaudium et spes.*)

In speaking of marriage in this way, the Church acknowledges that marriage is a far more complex reality than had been described previously. It was far more encompassing than two people merely exchanging certain rights and far more demanding than we had seen before. It now involves the whole person and is described in terms of the faithful, fruitful love of Yahweh toward the people of Israel, and toward the total self-giving love of Jesus for his people, the Church.

This teaching about marriage forms the whole basis for any discussion about annulments in the Church. It is impossible to understand the concept of annulment unless at the same time you understand the Church's teaching on marriage. This may account for the fact that many people today are confused about the number of annulments that are granted. The Church's teaching on marriage has changed and unless we understand what the Church teaches about marriage, our understanding of annulments will always be cloudy.

Marriages that are Null

In declaring a marriage null, the Church states that there was some key element missing at the time that the two people exchanged their consent.

At times, it was the canonical form of marriage that was missing. For Latin-rite Catholics, that means exchanging their consent before a properly delegated priest, deacon, or lay person and two witnesses. For members of the Eastern Orthodox Churches, it means receiving the blessing of the priest within the marriage liturgy. However, these laws apply only to Catholics and to the Eastern Orthodox. The Church recognizes all other marriages as valid, regardless of where they take place. For example, when two non-Catholic Christians marry before a judge or a justice of the peace, the Church looks upon that marriage as a valid, sacramental union. To state otherwise would be to imply that marriages of non-Catholics were of less significance than marriages of Catholics. It would be to deny the fact that marriage is first and foremost a human reality, which in the presence of the Lord, becomes a sign of a divine reality.

Sometimes, though, the person's freedom to marry is lacking. This would include people who are bound to a previous valid marriage, those who were not of a certain age, those who were related in certain ways or who had professed permanent vows to a religious community, or received the sacrament of orders. These facts, as well as several others called impediments, such as previous bond of marriage, are considered to be of divine law and hence bind all people. Others, like age, are merely Church laws and do not affect those who are not marrying in the Catholic Church.

At still other times, it is the person's actual consent that is called into question. These are the cases that are usually lumped together when people speak of annulments. They are handled by a judicial process which usually takes place over a period of time and requires certain legal procedures.

When Consent is Impaired

The overwhelming majority of cases before Marriage Tribunals in the United States involve some form of defect of consent. Father William Woestman, O.M.I., of Saint Paul University, Ottawa, Ontario, writing in *Studia canonica*, noted that this is a worldwide phenomenon. His statistics indicate the percentages of cases decided in 1987 on the grounds of defect of consent: Australia, Great Britain, and the Republic of South Africa, 100 percent; Canada, the Federal Republic of Germany, Ireland, and the Netherlands, 99 percent; France and the United States, 98 percent; Italy, 96 percent; Poland and Spain, 91 percent. These cases deal with a person's ability to understand and choose marriage; an actual understanding of the commitment and what it is they are choosing. If a marriage involves the pledge of two people to commit themselves to each other in an intimate union of life and love, then certain things are necessary. Both parties have to have adequate understanding of themselves before they give themselves to each other. They have to have an adequate understanding of each other so that they know the person they are accepting as their marriage partner. They have to have a basic capacity for intimacy since this forms the essence of marriage. If either of the parties is seriously lacking in one of these areas, the marriage could be declared null.

Tribunals generally state these reasons as "grounds" for the case. What follows is a brief explanation of what those grounds might be.

Grounds for an Annulment

According to canon law, a person is incapable of entering into a marriage if he or she suffers from a "grave lack of discretion of judgment concerning essential matrimonial rights and duties which are to be mutually given and accepted" (Canon 1095.2). Cases heard under these grounds usually deal with a person's maturity, motivation, and understanding of marriage.

Because the commitment to marriage is so all encompassing, a person has to have a maturity that is proportionate to the decision he or she is making. In a normal developmental process, a child gains the ability to make more and more complex choices based on an ability to understand the consequences of one's actions. Thus, there's usually a certain point when a parent allows the child to cross the street alone or go to the grocery store. Another point is reached when the adolescent is allowed to date or use the family car. Society, too, recognizes this development process when it states certain ages before a person can vote or purchase alcoholic beverages.

A far greater maturity is needed for marriage because the decision to marry has far greater consequences than some of the other choices that people make. It involves a person's whole life and is a commitment to the future as well as to the present. Until a person is able to understand that and is mature enough to make that commitment, he or she is not capable of entering into a valid marriage.

In other cases, though, the person's motivation comes into question. Canon 1057.2 states that the parties mutually give and accept each other "in order to establish marriage." This means that when a person exchanges consent with their partner, it must be motivated by the desire to enter into marriage and not for some other reason. At times, though, people have a different idea in mind. Some people view marriage as a "rite of passage" in society. It's something you do when you're too old to live at home or need to do before you start on a career. Other people marry for the purpose of escaping from a dysfunctional home environment. They suffer the physical or sexual abuse of one of their family members, they've been thrown out of their home, or they can no longer live with the unpredictability of alcoholism or other drug abuse. This consent is not "in order to establish marriage" but "in order to escape from home." Hence, they have not entered a valid union.

In still other cases, a person fails to understand the implications of their commitment. They see part of the picture and mistake it for the whole thing. A person may see marriage as a freedom but fail to see the responsibilities that go along with that. Another person may look at the good times they share with their partner but never realize they must share the struggles as well. They see the good aspects of their partner but overlook the fact that he drinks too much, has been violent on occasion, or has been unable to follow through on his commitments to school or to work. They may see the bad aspects of their partner but believe that marriage changes people and makes them into something that they are not. In these cases, too, the person is gravely lacking in discretion of judgment about essential marital rights and duties. They have not formed a correct judgment about those rights and duties, and hence enter into marriage invalidly.

Incapacity to assume the obligations.

A second category of cases is heard under the grounds of one of the parties being "not capable of assuming the essential obligations of matrimony due to causes of a psychic nature" (Canon 1095.3). Some tribunals refer to this as a "lack of due competence" or "lack of canonical competence."

There is some psychological ability needed to enter into Christian marriage. In some cases, the person does not have the psychological ability to enter into Christian marriage. There is some psychological factor in their personality which makes them incapable of establishing a life of intimacy with their partner or of committing themselves to a permanent union or to one that essentially involves fidelity to one's spouse, or to the generation of new life.

For the most part, this includes people who suffer from personality disorders, which produce characteristics directly opposed to the nature of marriage. For example, someone suffering from a narcissistic personality would not be capable of entering a relationship which is essentially directed toward the good of another. A person with an antisocial personality would not be capable of forming a relationship, which essentially involves permanence,

fidelity, and responsibility. And people with a paranoid personality or a schizoid personality would not be capable of the trust or the intimacy essential for a valid marriage. These people, along with those suffering from some of the other personality disorders, would be judged incapable of assuming the essential obligations of marriage. Also included in this category would be those psychosexual disorders or dispositions, which would make a normal, heterosexual relationship impossible.

***In declaring a marriage null,
the Church states that there
was some key element missing
at the time that the two people
exchanged their consent***

It's important to realize, though, that these must be serious psychological problems. All people have certain quirks and idiosyncrasies. All of us have isolated characteristics associated with certain personality disorders. It's only when those characteristics describe a person's major mode of acting, though, that it can be said that the person is, incapable of assuming the essential obligations of marriage. In these cases, the tribunal relies heavily on psychological experts for their understanding of the human personality.

Lack of intention:

Tribunals in the United States use less frequently the grounds that involve the intention of the parties when entering into marriage. These are some of the more traditional grounds used in the past. They include an intention against forming a union that can be dissolved only by the death of one's spouse, an intention against remaining faithful to one's partner, an intention against allowing the marriage to be fruitful or against fulfilling the responsibilities of parenthood, or an intention against working for the mutual good of each other. This also includes an intention against marriage altogether, for example, those who marry to regularize their immigration status, or to get a child baptized or enrolled in Catholic school. Such people lack the proper intention for marriage since they exclude something essential from the marital commitment.

Other factors:

Other factors can also influence a person's consent. These include such things as placing a condition on one's consent, entering marriage because of force or fear, entering marriage deceived by fraud, or being in error about the person you are marrying. These factors, however, are difficult to establish. Tribunals use these less frequently, especially when other grounds are clearly evident.

The Process

One of the unfortunate parts of the 1983 Code of Canon Law is the fact that marriage nullity cases are still treated as contentious cases, even though it's not entirely clear about who the contending parties are. Treating these as contentious trials, the law presumes there are opposing parties. This is not true most instances. In the majority of the cases before marriage tribunals, both parties agree that the marriage was null from the beginning. This produces the anomaly of having a contentious case with no contending parties. However, since these are the procedures that must be followed at the present time, most tribunals seek to apply the laws as pastorally and as sensitively as possible in order to find just and equitable solutions to the pain of marital breakdown.

The nullity process usually begins within the local parish. This is always going to be the key contact for the person seeking to have a marriage declared null. While at one time, divorced people were excluded from participation in the life of the Church; this is no longer true today. Pope John Paul II, in his *Apostolic Exhortation on the Christian Family in the Life of the World*, has stated: "I earnestly call upon pastors and the whole community of the faithful to help the divorced and with solicitous care to make sure that they do not consider themselves as separated from the Church, for as baptized persons they can, and indeed must, share in her life" (n. 84). Therefore, those who are divorced have a right to be a part of their local community of faith. It is for this

reason that most tribunals start the process on that level. It helps pastoral ministers become more aware of the needs of their people and helps the people become more integrated into their parish community. In many parishes, support groups allow those who have gone through the experience of divorce to come together to share those experiences and to support one another. These groups also assist people in the nullity process. Through sharing their experience of marriage and divorce, people gain a greater understanding of the factors that entered into their decision to marry in the first place.

Once the initial contact is made, tribunals differ on procedure. In some, the person contacts the tribunal directly for an interview; in others, much of the preliminary work is done through a written questionnaire. In either case, the main goal of the tribunal is to have the person tell the story of their relationship with their former spouse from beginning to end, to tell their own life story, and what they know of their former spouse's family history. Through this process, the tribunal gets a better understanding of these two people who entered into marriage: the families, their early life experiences, when and how their relationship began to develop, the factors that entered into their decision to marry, the ways they lived out their marital commitment to each other, and the factors which caused the breakdown of the union.

This is usually the most difficult part of the procedure since it requires the person to reflect upon the events of the past and to see how those events influenced the choices they made. At times, this involves re-living painful experiences of marriage or family life and gives the person the opportunity for greater insight, understanding, and appreciation for the complexity of Christian marriage. It also gives the Christian community the opportunity to support the person who is going through this process. The sensitive questioning of an interviewer or the discussions in support groups help share burdens and so fulfill the command of the Lord.

The names of witnesses are also required. Like the term "annulment," the term "witness" is not exactly correct. Unlike the witness in a civil trial who generally testifies for one person or against another, the witnesses in a marriage nullity case are asked to describe the marriage as they saw it. Often, the witness can give the tribunal greater insight about the parties in the marriage and into the dynamics of that relationship as they lived it out. Witnesses are usually family members, but they can be nearly anyone who knew the parties during the course of their marriage. Since the tribunal focuses on the parties at the time of their marriage, however, it is essential that the witness have some knowledge of the marriage from its inception. Tribunals differ in the way they obtain witness testimony. Some require the witnesses to be interviewed in person while others send out written questionnaires. Some tribunals seek witness testimony before they begin the formal procedure; others wait until the case is actually accepted.

To begin a case, the person presents a formal petition to a tribunal which has jurisdiction over the marriage case. The case is then assigned to a judge, who accepts or rejects the petition. If he accepts it, he must also determine the grounds under which the case will be heard.

At this point, the judge informs both parties that a case has begun. Since there is a presumption in law that the marriage is valid, and since the other party (usually called the respondent or the defendant) has the right to uphold the validity of that union, it is absolutely essential that he or she be contacted and given an opportunity to participate. Failure to do so results in the whole process being null. At times, petitioners have requested that respondents not be contacted because of previous violence or harassment and the fear of a respondent's reaction when informed of the proceedings. This may seem reasonable, but the fact is that respondents will generally hear about these proceedings from other sources in addition to the tribunal. Children of the marriage or relatives of one of the parties usually talk about the case long before the tribunal accepts it. Keeping it a secret is not an option that is open to the petitioner. The respondent has a right to know about the proceedings and to participate in them.

In some cases, though, the respondent has disappeared. This is especially true of a marriage which ended a number of years before. The petitioner has no knowledge of the respondent's whereabouts and has made every effort to find a current address. In these cases, the tribunal can proceed with the case but usually appoint an advocate to protect the rights of the respondent.

The judge may also need additional information from the petitioner and will request an additional interview for a psychological evaluation. In addition, he may ask the person to sign a release form so that he has psychological records available. Since many cases today involve psychological grounds, the judge may ask the psychologist specific questions about the maturity of the parties and their ability to enter into a marriage.

Once the judge has all the testimony, the case is presented to the advocates (if there are any) and to the defender of the bond, who presents arguments upholding the validity of the marriage. After that, the judge writes his decision and states his reason for declaring the marriage null or upholding its validity. An affirmative decision is automatically appealed, however, and must pass through a review process where the decision is either confirmed or the case is opened to a new process. If the appeal court confirms the affirmative decision or reaches an affirmative decision on its own, the case is concluded and the parties are free to marry in the Church. If the appeal court overturns the affirmative decision, the case can be appealed to Rome for a third hearing.

The length of time that this takes varies from tribunal to tribunal, based upon available personnel. Some tribunals can conclude cases within eight months while others take several years. Lack of cooperation on the part of the petitioner or the witnesses can also impede the progress of a case. Although the respondent has a right to participate, no one can be forced to exercise a right. Furthermore, the petitioner has a right to have the case heard, and to have it concluded in a timely fashion.

The fees that tribunals request also vary widely. Some tribunals are subsidized through the diocesan tax on parishes or through a special collection for diocesan needs. Other tribunals have a fee based on the petitioner's income, while still others ask the petitioner to determine how much he or she can contribute toward the total cost of the case. Most tribunals have liberal policies for the reduction or total waiver of the fee.

Conclusion

It is no secret that more declarations of nullity are being granted today than in the past. Twenty years ago, tribunals heard slightly more than fifteen thousand marriage nullity cases throughout the world. In the present year, the number of affirmative decisions will approach sixty thousand. There are many reasons for this including better staffing of marriage tribunals throughout the world and a greater number of dioceses with functioning tribunals. But, in large part, it is due to a greater understanding of the nature of Christian marriage and a greater appreciation of the commitment that couples make to each other when they marry "in the Lord."

*From "marriage and family" magazine,
April 1991, ©Abbey Press, St. Meinrad
Archabbey, St. Meinrad, IN 47577.
Reprinted with permission.*

Definitions

Canon Law:

The laws by which the pastoral activity of the Church is coordinated, organized, and directed. The Code of was most recently revised in 1983 so that it conforms to the teaching of the Second Vatican Council. (Codes of law have been around in the Church almost from the beginning. At various times, they have been gathered together; but the first attempt at a systematic codification of the laws of the Church was in 1917. At the time he convoked the Second Vatican Council, Pope John XXIII also called for a new codification of law. (This revision process took twenty-five years to complete.)

Canonical form of marriage:

Catholics are normally required to marry before a priest, deacon, or designated lay person, and two witnesses. The Orthodox are required to marry in the Orthodox Church and receive the blessing of the priest. All other people - Christians or non-Christians, baptized or non-baptized - can marry in whatever way they choose. The Catholic Church recognizes the marriage as valid.

Covenant:

An agreement between two parties that implies a mutual relationship between them. It is distinguished from a contract, which merely sets out certain rights or duties, regardless of a relationship. While in times past, marriage was spoken of as a contract; the second Vatican Council restored the term "covenant" to the Church's teaching on the nature of marriage.

Defect of consent:

Consent to marriage must be made freely and totally by two people who are capable of giving that consent. If a person is forced into giving consent, withholds something from their consent, does not have the ability to make such an important decision or the capacity to carry it out, their consent is called "defective."

Impediments:

Impediments are obstacles to a valid marriage. Some impediments can be dispensed, however, since they are merely Church law. For example, a dispensation can be given to allow a Catholic to marry a non-Catholic in a non-Catholic church. Other impediments, though, cannot be dispensed since they are based on natural or divine law. Thus, a person who was in a previous valid marriage cannot receive a dispensation to marry again; the previous marriage must be declared null or dissolved through the Pauline or Petrine Privilege before a second marriage can take place.

When the Church declares a marriage null, it states that at the time two people exchanged consent there was something either present (for example, an impediment, a personality disorder, etc.) or something missing (such as the required maturity, the necessary freedom or the proper intention), which prevented the parties from entering into a true, valid, and binding union.

A Tribunal is a Church court usually composed of at least three judges who are assisted by various notaries, advocates, and other experts. Canon law provides that the number of judges can be reduced to one for certain cases and under certain circumstances. While Church Tribunals can become involved in a number of issues, in the United States they deal almost exclusively with cases involving the nullity of marriage.

A valid marriage is one which is entered into with the proper form, intention, freedom, discretion, and capacity. An invalid marriage is one which is lacking in at least one of these areas.