

It is anybody's guess how many valid sacramental marriages are nullified by phony annulments followed by remarriage.

American annulment mills

By Robert J. Kendra

“Take no part in the unfruitful works of darkness, but instead expose them.” (Eph 5:11)

■ An important characteristic of American history has been its innovative application of mass production. A paradigm would be the famous industrialist Henry Ford, who perfected the assembly-line to produce the Model T Ford around 1915 at an affordable price for many Americans. Fifty years later, American marriage tribunals seem to have caught on and began applying similar methods of streamlining the annulment process, with liberal interpretations of Vatican II and even disregard of *The Code of Canon Law* to accommodate a mushrooming divorce ethos.

The result has been an increase from 338 annulments in 1968, to 5,403 in 1970, to a peak 61,945 in 1991. Since then, the explosion has stabilized at around 40,000 U.S. annulments per year. However, these commonly quoted statistics implying a recent decline are deceiving. Tribunals are not getting tougher on granting annulments. They are getting fewer petitions for annulments, probably due

to divorced Catholics cohabitating and not bothering with annulments. Since 1964 the tribunals have consistently ruled for annulment in about 97 percent of the cases they accept. Seventy percent of annulments worldwide are accounted for by American marriage tribunals though the U.S. has a mere six percent of the world's Catholic population. So prevalent has been the granting of annulments, that they are often referred to as Catholic divorces.

Nearly every recent book on annulment has been an apologetic for America's preeminence in the production of annulments, or a rosy explanation of annulment friendly tribunals. The only book to critically study the entire tribunal system is Robert H. Vasoli's *What God Has Joined Together*, a godsend for opponents of wholesale annulments.

The problem of divorce

Modernists, bent on melding Catholicism with late-20th century acceptance of divorce, have a problem—how to permit civil divorce,

without simultaneously admitting to a Catholic divorce. The “solution” is semantic deception. Instead of allowing a Catholic divorce, they deny that the couple was ever married.

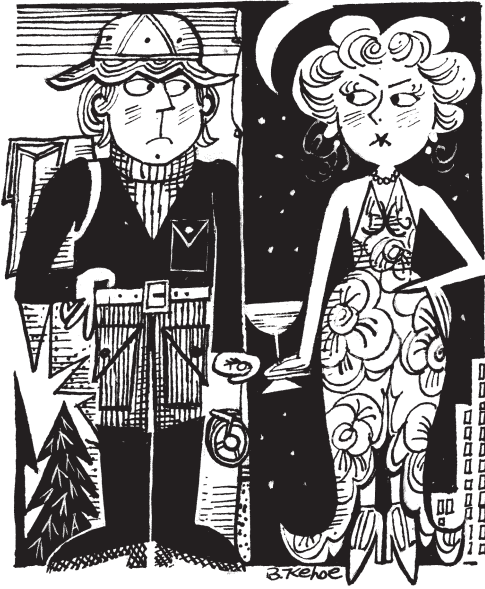
Church tribunalists pretentiously assert that they are not annulling a marriage, but simply acknowledging that the marriage never existed. They further assure that despite the couple never having been married their children are not illegitimate, “because the marriage was entered into in good faith and thought to be a valid marriage.” However, this fiction causes another problem since the state insists that the couple were in fact married, and requires a divorce to dissolve the marriage. So tribunals insist that a divorce precede the annulment process. Then the canonical magicians on the tribunal can make the sacramental marriage disappear without any civil ramifications.

But Jesus Christ sternly forbade divorce. “. . . whoever divorces his wife and marries another commits adultery against her” (Mk 10:1-12; Lk.16:18; 1 Cor.7:10-11). Reinforcing the New Testament condemnations of divorce, Popes Leo XIII and Pius XI elaborated on the evils of divorce in their encyclicals “Arcanum,” and “Casti Connubii,” respectively. Vatican II continues by condemning the plague and profanation of divorce in “Gaudium et Spes,” and the *Catechism of the Catholic Church* calls divorce “a grave offense against the natural law,” and “immoral.” *Canon Law* even requires ecclesiastical approval for the separation of spouses. Rather than confront the dilemma, the American Church just sweeps 2,000 years of teachings under the rug. When was the last time you heard a bishop or priest condemn divorce?

A worse problem for the Church is complicity in promoting divorce. A conscientious petitioner (the party seeking the annulment) would first seek an annulment to be assured that no valid sacramental marriage existed, prior to seeking a civil divorce. However,

faced with this request, tribunal officials respond that a divorce is required prior to accepting an application for annulment, allegedly to assure that the marriage is irreconcilable. But Jesus clearly condemned divorce even without remarriage, “Therefore, what God has joined together let no man put asunder” (Mk 10:9), and canon 1060 stipulates, “in a case of doubt the validity of a marriage must be upheld until the contrary is proven.” Therefore, a tribunal must prejudge the marriage to be invalid *prior* to judging its validity, in order to justify a divorce preceding an annulment. Assurances of obtaining an easy annulment, given by the pro-annulment pastoral tribunals to perplexed petitioners (little or no effort is made toward reconciling the couple), actually precipitates the divorce. Once divorce is granted, which is a given with no-fault divorce laws, the tribunal is programmed to grant an annulment.

Realistically, in my opinion, tribunals might be reversing the prudent order of annulment then divorce to avoid ramifications in civil court and embarrassing publicity. Since extremely few Americans are severely deranged, tribunals exaggerate the gravity of disorders to justify most annulments. Divorce lawyers could have tribunal files subpoenaed to use the exaggerated, and even fictitious evaluations to attack the sanity of their client’s spouse to reap a more favorable court decision affecting custody of children, child support, alimony and distribution of the couple’s financial assets. An aggressive lawyer could argue that his client had to bear the burden of a deranged spouse when symptoms of hidden incapacity for marriage manifested themselves not only to the detriment of the marriage, but to the well-being of his client who was subjected to mental and/or physical abuse. The civil court proceedings could turn into a circus; one lawyer disingenuously arguing for validity of tribunal assertions, and the other making a laughingstock out of flimsy tribunal opinions



and judgments based on junk science and counterfeit psychology. The entire annulment process would be subjected to public ridicule. No, it would be much safer to have the civil divorce settled before writing the fiction necessary to justify nullity of a marriage.

Whether or not the tribunal judges theorize that a sacramental marriage exists, the fact remains that a civil marriage existed. With rare exception, divorce from that marriage is wrong, has been condemned by the Church since the time of Christ, and has undeniably harmful consequences, particularly to children of the marriage, and should *not* be facilitated by compliant tribunals.

Canon Law

The ecclesiastical term for annulment is declaration of nullity. Tribunals never use the term annulment, since there is no such thing as the annulment of a consummated sacramental marriage. *The Code of Canon Law* describes 101 canons for trials in general, 170 canons for contentious trials, and another 37 canons for certain matrimonial processes. The most important canon for a contentious

respondent (the party opposing an annulment) is probably canon 1598-1, which requires that parties be permitted to inspect the acts (evidence) of the case to guarantee their rights of defense, and which can be easily disregarded to avoid cumbersome delays and conceal biased opinions. Of equal importance for the bewildered respondent upon discovery that he or she was never married are canons 1417 and 1444, which permit an appeal of a decision by a U.S. tribunal to the more conscientious, canonically firm and unbiased Roman Rota, and which is routinely ignored to expedite a speedy conforming decision in the second instance. Other important canons are canons 1554, 1555 and 1576, requiring that parties be notified of witnesses and experts and given the opportunity to request their exclusion; canons 1534 and 1564, prohibiting the judge from asking the parties or witnesses leading questions; canon 1608 requiring moral certainty in the judgment; canon 1614 requiring a judgment to indicate the ways in which it can be challenged (including appealing to the Roman Rota); canon 1616 requiring a judgment to be corrected if there is material error in presentation of the evidence (including false testimony); canon 1620 enabling the Rota to nullify a decision by a U.S. tribunal; and canon 1634 giving the respondent the right to obtain a copy of the judgment.

However, American tribunals circumvent many of these canons to expedite production of annulments. Only when an appeal is made to the Roman Rota, which nullifies some ninety percent of U.S. annulments, is the mischief of American tribunals redressed. Unfortunately, the Rota only reviews about 10 to 20 U.S. cases per year. This is less than a miniscule 0.04 percent, or one case per 2,500 decisions.

The Rota recently irremediably nullified a U.S. tribunal sentence nullifying a marriage and remanded it back to the U.S. tribunal for

retrial, based primarily on violations of canon 1598. Brief excerpts from that Rotal decree, stressing the importance of a respondent's right of defense, are as follows:

- Rotal jurisprudence has enjoined and established a hundred times that canonical judgment cannot be conceived without a validly constituted opportunity for rebuttal between the parties and that is required for the exercise of the right of defense.
- The Supreme Pontiff also warned . . . 'One cannot conceive of a just judgment without the 'contradictory,' that is to say, without the concrete possibility granted to each party in the case to be heard to be able to know and contradict the requests, proofs and deductions adopted by the opposing parties . . .'
- Therefore, it is logically established in canon 1620-7 that a sentence is vitiated by irremediable nullity if the right of defense was denied to one or the other party . . . the essence of the right of defense consists of two elements: the right to cross-argument and the right to a hearing. . . .
- So that the respondent party can use this faculty to contradict and object in the matrimonial process it is necessary that the proofs brought forth during the course of the process be published at a suitable time or before the sentence is given, again so that he can bring forth his arguments immediately or in the discussory phase.
- . . . the principal intention (of canon 1598) is to establish, and indeed under pain of invalidity, the right of the *parties* to inspect the acts . . . the parties are the true protagonists in a process, and certainly the essential ones.
- . . . To prohibit one or another party from the inspection of the acts, by restricting either all or an indeterminate

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number of documents under secrecy, entails a nullity of the process.

Most tribunals carefully secure the confidentiality of cases largely to mask their own loose adherence to *Canon Law* and questionable judgments, and take short cuts to expedite annulments. The most blatant examples of ecclesiastical injustice are the erroneous interpretation of canon 1095, which U.S. tribunals interpret to permit an amorphous lack of discretion to declare a party incapable of contracting marriage, but which is contrary to Rotal requirements for extreme psychopathology; failure to initially appoint resolute advo-

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cates to guide and assist the parties (especially contentious respondents), who have no experience with the process; failure to honor a contentious respondent's right of defense of the marriage; and failure to inform the parties that an appeal can be made to the Roman Rota which will probably overturn or remand a U.S. annulment, instead of an appeal being automatically sent to another U.S. tribunal for a conforming decision in the second instance and an inevitable rubber stamp of the annulment. U.S. tribunals dislike having appeals sent to Rome, not only because of the likely overturn or remand, but also due to the Rota's backlog and a wait that could take years.

About two-thirds of American annulments are based on canon 1095, which involves psychological opinions—hardly an exact science and subject to facile adulteration. The boiler plate of one decree, which is probably typical, devotes some 2,000 words of ecclesial mumbo jumbo to interpreting this canon. It would take a separate article to properly criticize its substance, which is contrary to Rotal jurisprudence. Suffice it to say that this logorrhea includes many dubious rationalizations for determining the mental capacity for marital consent at the time of the wedding, such as the following: “the court may be faced with the seemingly impossible task of reconstructing the consenting capacity of a person after a decade or two. When such a case comes to trial, the history of the party's contractual performance will be the primary evidence concerning contractual capacity.”

In other words, the tribunal admits that there really is no way to assess the condition of the bride's and groom's minds when they exchanged vows (consent), but that the behavior of the couple ten or twenty years hence can reveal, with moral certitude, that they suffered from a grave lack of discretionary judgment concerning essential matrimonial rights and obligations of permanence, fidelity

and openness to children at the time of their wedding. Yet these same couples, despite allegedly incriminating evidence of contractual incapacity for ten or twenty years, can suddenly transmogrify into having adequate capacity for a second marriage!

Realistically, the very few people incapable of contracting marriage as specified in canon 1095, are so deranged that they simply don't get married.

A case study

The writer was victim to two decrees of nullity by a U.S. Tribunal, both decrees of which were nullified by the Roman Rota. In my case, which is probably similar to other U.S. cases, the judges claimed that both of us were handicapped by “a very defective understanding of the nature and purpose of marriage and of the rights and obligations to be mutually given and accepted.” However, if anyone in this case misconstrued the nature and purpose of marriage, it was the U.S. Tribunal. Canon 1095-3 states that parties who, due to causes of a psychological nature, are unable to assume the essential obligations of marriage are incapable of contracting marriage. But what are the essential obligations? The Church has long taught that they are permanence, fidelity, and openness to children, a teaching that goes back to St. Augustine. Conspicuously absent from the Tribunal's decree of nullity was any effort to examine how these fundamental components figured in our exchange of consent and in the marriage itself. Like most couples, we entered marriage with some uncertainty and reservation. Nevertheless, when we consented to marry both of us were fully aware of the essential elements and sincerely committed to them. Whatever problems beset our marriage, it undeniably remained intact for twenty years, and, in my opinion, could have endured until my wife or I died. Moreover, we were faithful to each other throughout the marriage, and

the four daughters we conceived and raised attested to our openness to children. But the Tribunal simply avoided the Magisterial essential elements of marriage to circumvent this vital Church teaching.

In his 1987 and 1988 allocutions to the Roman Rota, Pope John Paul II provided important clarification to canons 1095-2 and 3. As tests for marital validity, both canons require that one of the parties, or both, suffered from a serious psychopathology (anomaly) when marriage was contracted. Incapacity as a basis for nullity must derive from grave psychological disorders and it must be nearly total in magnitude. Some incapacity does not warrant nullity, if only because human capabilities are by nature and original sin short of perfection. Moreover, it must be shown that the disorder rendering them incapable was present and operative when consent was exchanged. It should be further noted that a judgment of incapacity

requires compelling clinical evidence. Without it, little credence can be given to assumptions that psychological disorders and problems surfacing well after the marriage was contracted were present from the outset. The Tribunal seemed oblivious to these considerations.

The sole semblance of serious psychopathology in the case consisted of alleged alcoholism of both parties derived almost exclusively from the petitioner's testimony, subsequently repeated in the testimony of the tribunal expert, counselors, and her sister. I flatly denied that alcoholism was a problem and the court failed to establish the claim. The counselors scarcely qualified to pontificate on the presence, absence, or dynamics of serious mental disorders. The court appointed expert's views, at least those cited by the Tribunal, were not sufficiently discriminating to apply to the question of marital validity. That both parties were credited with "certain traits

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of immaturity” did not differentiate them from most of the human race, much less those who marry.

What in my view was little more than social drinking was elevated to the level of a crippling disorder. Yet the record did not show any drunken brawls, chronic alcoholism, or evidence that drinking influenced my long and successful career as an engineer or my wife’s work as a Catholic school teacher and devoted mother of four children. Despite lacking hard evidence other than my wife’s claims, the tribunal leaped to the extraordinary and rash conclusion that “It is clear that alcohol seems to have been the primary bond between them.” Summarily dismissed or relegated to secondary status were ties engendered by both of us being practicing Catholics, our conception and rearing of four children, and our living together for nearly two decades.

Unable to establish that my wife and I were incapable of fulfilling the obligations of permanence, fidelity, and openness to children, the Tribunal found that we were incapable of giving ourselves “to each [other] in the communion of the whole of their lives.” Several popes (Pius XI, Paul VI, John Paul II) and the *Catechism* refer to marriage in similar terms —as a communion of life and love. Manifestly, such expressions represent what marriage *should* be, a noble ideal toward which all married couples should aspire. But there are compelling and obvious reasons why it cannot be an acceptable test for validity. Neither papal pronouncements, the *Catechism*, nor Rotal jurisprudence have designated the communion of life and love as a determinant of validity. To do so would be tantamount to conferring Church approval on divorce and remarriage inasmuch as most marriages fall short of that ideal. What can be more destructive of the communion of life and love than divorce? American Catholics now divorce at much the same

rate as non-Catholics. Can tribunals rightly and routinely assume that such unions—now numbering in the millions—are ipso facto invalid?

Most parties to marriages that remain intact until death must constantly struggle to even approximate a communion of life and love. For them, more often than not it is a marital state that comes and goes, much akin to the personal journey toward sanctification. Making valid marriage stand or fall on whether a communion of life and love is achieved is analogous to requiring sainthood for membership in the Church. Finally, while hardly a Catholic alive does not know that marriage entails permanence, fidelity, and openness to children, very few realize it must be a “communion of life and love,” and still fewer can articulate what a “communion of life and love” consists of. As inspirational a goal as it may be, it has yet to be authoritatively provided with clear-cut juridic and doctrinal content. If popes, canonists, and theologians have not yet given it such content, how can those entering marriage be held to such a nebulous measure of validity?

There was no clear-cut showing—nothing close to the moral certitude requisite—that either of us was in the throes of a serious mental disorder when we exchanged consent, and therefore gravely lacking due discretion or incapacity with respect to the essential rights and obligations of marriage. What the Tribunal did was to confuse incapacity with unhappiness. Put another way, the Tribunal equated “unhappy” marriage with invalid marriage. It would have been a sad, nay, tragic day for Church teaching on the permanence and indissolubility of marriage had the Tribunal’s decision been ratified by the Sacred Roman Rota.

A contentious respondent, faced with the near impossible task of arguing for validity of a marriage on substantive grounds, is no match for the Jesuitical wizards controlling

American tribunals and set on annulling the marriage. Only with guidance from an expert in matrimonial canon law can substantive arguments be effective, and then almost only before the Roman Rota, or threat of appealing to the Rota. Lacking this expertise, a better strategy to combat the stacked deck might be to utilize procedural tactics and demand strict adherence to *Canon Law*, especially canon 1598's right of defense, and plan on appealing a likely tortuous decree of nullity in the first instance, to the Roman Rota in the second instance. This would likely stall a definite sentence and maintain technical validity of the marriage indefinitely. It has even happened that one of the parties died after a fourteen (14) years wait—a pathetic way to obtain theological justice. Then, a definite sentence is never issued in any tribunal regarding the question of nullity, and the case is consigned to the archives. The delay would also put a cog, albeit small, in the connived American mechanism cranking out annulments wholesale.

Unfortunately, when neither party con-

tests an annulment, there is no effective check on the decision, and annulments can be granted en masse with impunity. It is anybody's guess how many valid sacramental marriages are nullified by phony annulments ("invalid" decrees of nullity), followed by remarriage by one or both parties that result in effective tribunal approved adultery. Why hasn't a scrupulous and courageous tribunal insider exposed the misfeasance of tribunals in granting phony annulments? Modernism, "the synthesis of all heresies" resulting from subjectivist thinking and condemned by Pope St. Pius X in 1907, survived underground until resurfacing in the mid-1960s. Has it now metastasized throughout the entire Church bureaucracy? Why must it take a determined respondent to experience the travesty of tribunal dishonesty to expose, after feeling morally obligated, the insidious undermining of the sacrament of Matrimony by American annulment mills?

St. Joan of Arc, victim of earlier tribunal injustice, pray for us. ■



Mr. Robert J. Kendra is a retired civil engineer, with a B.S.C.E. from the University of Notre Dame. He is a widower, and has four married daughters, and two grandchildren. During the past ten years, he has annually mailed statistical reports of the complicity of Catholic voters and politicians with legalized abortion to the U.S. bishops and has had an article published on the topic in another Catholic periodical. He lived through the whole process of divorce, annulment and Rotal remand, the subject of this, his first article for HPR. Several of his letters on annulments and other topics have been printed in past issues.