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BE ANNULLED OR
DISSOLVED**

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D. F. MILLER, C.S.S.R.

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D. F. MILLER, C.S.S.R.

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CAN YOUR MARRIAGE BE ANNULLED OR DISSOLVED?

D. F. MILLER, C.S.S.R.



The question in the title of this pamphlet is purely academic for most married people. They know that they are rightly, validly and indissolubly married. They intend, with the help of God's grace, to be faithful to the sacramental contract they made on their wedding day till death. Reading this will profit them in that it will make them realize more deeply and gratefully how indestructible are the foundations of their home.

There are, however, two classes of married people who are or should be deeply concerned over the right answer to the above question. The first consists of those who have suffered a failure in marriage;

who are separated, or would like to be separated, from their partners; who would like very much to have their unsuccessful marriage declared null and void so that they might enter into another marriage.

The second class consists of those who are living in an invalid marriage that cannot be made valid in the eyes of God, which means that they are living in open and habitual sin. Couples in this state may be getting along very well together, but for their soul's salvation they should take measures to escape from their state of sin, and then, if they eventually want to marry someone validly, have their previous attempted marriage declared invalid. This is a very simple process once they have separated, or at least ceased living as husband and wife.



I. Mistaken Ideas

It is the first class of married people above mentioned that creates most of the problems for Church authorities. Many mistaken notions are found among them.

The first mistaken notion is that the failure of a marriage on account of the sins and crimes of one of the partners certainly should give the innocent partner good grounds for having the marriage declared invalid. "A year or so after we were married," they say, ("or even within the first year of marriage") "my partner turned out to be a drunkard, or an adulterer, or impossible to get along with. We had to separate. If I had known that all this would happen, I would never have married him (or her). Surely the Church will have pity on me and declare that marriage invalid so that I can marry again."

The fact is that things that happen *after* a couple has entered and consummated a valid Christian marriage can never destroy the validity of that marriage. If there was no defect present at

the time the marriage contract was made rendering it invalid, then subsequent events, no matter how horrendous and pitiable for the innocent person, cannot release either person from the lifelong bond of marriage. If they could, then no marriage would ever be safe from attack.

The second mistaken notion is that money or influence with individuals holding authority in the Catholic Church can win a declaration of nullity for anybody. This is absolutely and demonstrably false. Files are kept in all Catholic dioceses throughout the world on all the cases in which declarations of the nullity of marriages are handed down. Access to these files would demonstrate to anybody that each case was decided on facts, on evidence, on proofs, and that the decision was not influenced by gifts of money or appeals to friendship.

A third mistaken notion is that those who are not Catholic can, if they become Catholics, obtain from the Catholic Church an annulment of any previous marriage. It is true that in the case of marriages of unbaptized non-Catholics,

there is the possibility of the dissolution of the marriage bond in behalf of one of them who becomes a Catholic and can no longer live in peace with the other. But the Catholic Church considers the marriages of validly baptized Protestants, whether entered into before a minister, or a judge, or any authorized official, as sacramental and indissoluble, unless one of the defects mentioned below made it invalid from the beginning.

A fourth mistaken notion is that mere statements of one or both the partners to a certain marriage can be the basis for a declaration of its nullity by the Church. If this were so, declarations of nullity would be as common as weddings. The Catholic Church acts on the presumption that every marriage, whether of Catholics or non-Catholics or of persons of different faiths, is valid unless objective evidence and unimpeachable proof can be brought to show that there was an invalidating defect present in that marriage from the very beginning. It is never enough for the husband and wife merely to state, or even to swear, that "there

was such and such a defect in our marriage from the beginning." There must be proof of that defect from sources other than the say-so of the interested persons.

II. Grounds for Declaration of Nullity

Note that we here use the phrase "declaration of nullity" rather than the phrase "annulment of marriage." The latter phrase is sometimes loosely used as if it were synonymous with the former. There is, however, a real difference between the two things represented by the phrases. An annulment of marriage implies that the Church is now making something null that was not null before. In most cases, however, the Church does no such thing. She merely examines the evidence and the facts presented to her, and if they stand up in court, she declares that the marriage in question never was a true marriage; it was null from the very beginning.

In a minority of cases the Church does annul or, to use a better word, dissolve marriages that were valid before. One such case is that mentioned above, of

two unbaptized persons who were validly married according to the natural law, one of whom now becomes a Catholic and can no longer live in peace with the unbaptized partner. This will be explained below under the heading, "Grounds for Dissolution of Marriage." In a similar sense the Church may be said at times to annul unconsummated marriages.

Now the question: What are the grounds on which the Catholic Church can declare marriages invalid? They are of three kinds: 1) Those that would make any contract invalid (marriage is essentially a contract between two people) because they pertain to the condition of the minds and free wills of the contracting persons; 2) those that make the specific marriage contract invalid because they involve circumstances that are contrary to God's laws for entering a valid marriage; 3) those that make the marriage of a Catholic invalid because he (or she) attempted marriage in the wrong way or contrary to the laws of the Church concerning marriage. Consider these three kinds of invalidating circumstances in detail.

1.

Circumstances that would make any contract invalid.

Any contract is valid only if the persons making the contract know what they are doing and freely consent to do what the contract involves. Therefore, if it can be proved of a certain marriage that at the time of the wedding one of the partners was not able knowingly and freely to enter into the contract, and that no proper steps were later taken to make consent to the contract free and legal, the marriage would be invalid and would have to be declared such by an examining court. Let it be remembered always that *proof* is necessary. Consent to a marriage is presumed to be free and effective unless evidence proves it to have been otherwise.



These are circumstances which, if proved by trustworthy evidence, would be sufficient for having a marriage declared null:

- 1) If one partner was so drunk or drugged at the time of the wedding that he (or she) could not know what he was doing.
- 2) If one partner was so mentally deficient or deranged that a free human act was impossible.
- 3) If one partner was forced into the wedding under terrifying threats of grave harm from others unless this marriage was entered, the consent to it would not be free and therefore would be invalid.

2.

Circumstances that make the specific marriage contract invalid.

There are three general *types* of circumstances that make specific marriage contracts invalid. Each will be considered in turn.

1) God established the nature of marriage, and, while He left individual men and women free to enter it or not enter it, He did not leave them free to change its nature, or to write into their own contract of marriage conditions or clauses that are contrary to the nature of marriage as He established it. If any such conditions or clauses can be proved to have been deliberately put into a certain marriage contract, the marriage would have to be declared invalid. Here are examples of such conditions.

a. To be valid, according to the plan and the law of God, a marriage contract must be accepted by both partners as indissoluble, i.e. unbreakable except by the death of one of the partners. If it can be proved by the testimony of reliable witnesses, who heard one of the partners to a marriage speak of this matter before or at the time of the marriage, that that partner did not intend to bind himself or herself indissolubly to their specific marriage, the contract could be declared an invalid one. Note that this is a different matter from having a favorable opinion of divorce and remarriage

in general. One may have such an opinion, and still intend to bind oneself to a certain marriage for life. The invalidating circumstance is that the person can be proved to have withheld a promise of fidelity for life to a specific marriage contract.

b. To be valid, according to the plan and the law of God, a marriage contract must include the promise rightly to use the privileges of sex, that is, the marriage act, and to accept the children that may result therefrom. If a person entered a so-called marriage with the deliberate intention of reserving to himself (or herself) the right to use contraception perpetually or even for certain periods of time, and if this intention can be proved to have been part of his contract, then the marriage could be declared invalid. It should be noted that the fact that a husband or wife abuses marriage by contraception does not necessarily mean that the contract was invalid. It is only when it can be proved that in making the contract the person was reserving the right to contraception that the marriage can be declared invalid.

2) God not only established the nature of marriage, but He also set up certain conditions that must be present before a valid marriage contract can be made. These conditions are best understood under the form of the impediments that arise out of the natural and divine law to valid marriages. Under the next major heading will be considered invalidating impediments to marriage that are set up by the authority of the Catholic Church, and which apply primarily to her own members. Here we are considering impediments to a valid marriage that arise from the natural law and are binding on all human beings, whether they be Catholic or not.

What are impediments that would make the attempted marriages of any persons invalid? They are the following:

a. *Impotence*. This means a physical inability to exercise normal and complete sex relations, whether on the part of the man or woman. If it can be proved to have been present at the time of the attempted marriage, and to have been permanent and incurable, the marriage would

have to be declared invalid. Here it should be noted that sterility, i.e., inability to have children, either on the part of the husband or the wife, is not the technical impediment of impotence, and does not make marriage invalid.

b. *An existing valid marriage bond.* In the eyes of the Catholic Church, no matter what be the laws of a nation or state regarding divorce and remarriage, this constitutes an impediment to valid marriage for both Catholics and non-Catholics. The only exceptions are the cases of unbaptized married persons, whose marriages, under circumstances outlined below, may sometimes be dissolved by the Catholic Church, and cases of contracted but never consummated marriages.

c. *Blood relationship.* The natural law upheld and specified by the Church for her members, and civil laws of most states, are in general agreement that blood relationship is an impediment to marriage, though they may differ on the degree to which it extends especially in the collateral line. The Church sets it down that all attempted marriages between blood

relatives in the direct line, i.e., father-daughter-grandson-great grand-daughter, are invalid. All attempted marriages of relatives in the collateral line to the 3rd degree, i.e., second cousins or closer, are invalid without a dispensation from the Church. For the unbaptized, the civil law must be accepted as the interpreter of the natural law.

d. *Lack of proper age.* According to the natural law, which is binding on everybody, this impediment makes invalid the marriages of boys or girls who are too young to know what the essence of marriage is, or to make an intelligent contract concerning it. In effect this comes under the heading of circumstances that would make any contract invalid. The Catholic Church specifies ages below which marriage cannot be validly contracted by her members. They are the 16th year completed for a boy and the 14th year completed for a girl.

3) Jesus Christ, the Son of God, made marriage a sacrament, and entrusted its administration and protection to the Catholic Church. Under this delegation,

the Church has the authority, a) to set up the rules according to which her members must enter marriage, and b) to declare certain circumstances over and above those mentioned in the preceding, to be impediments to a valid marriage.

a. Since marriage is a sacrament, and therefore a holy and spiritual thing, the Church rightly commands that, in normal circumstances, a Catholic can validly be married only in a religious setting, i.e., at the very least before a priest and two witnesses. This holds whether the Catholic is marrying another Catholic or a non-Catholic. It holds whether the Catholic has been living up to his religion or whether he has sinned or lapsed and even "fallen-away." Of course this law, insisting that marriage be entered into only before a priest, is binding only on Catholics. Protestants and unbaptized persons can be validly married before any authorized person of their choice.

Therefore the attempted marriage of any Catholic before a judge or a justice of the peace or a minister of a non-Catholic religious sect is an invalid marriage

from the beginning. Any Catholic who has attempted marriage in such a way must, if he wishes to return to God's grace, and if there are no impediments to his marriage, bring his partner before an authorized priest and two witnesses and have it validated. In some cases in which the non-Catholic person refuses to approach a priest, the Catholic Church will heal or validate the marriage as from its very beginning, if certain conditions are fulfilled by the Catholic person, and without the appearance of both partners before a priest.

b. Over and above the invalidating impediments named above, the Church has set up others that can readily be seen to be necessarily designed to protect the sacrament of marriage from abuse and violation by her members. In general, these are specifically binding only on baptized persons, but some of them, in some places, have been adopted by the civil laws of a nation, in which case they become binding on unbaptized persons as well as baptized persons. Here is a listing of the impediments to valid marriage

set up by the Catholic Church under the authority given to her by Jesus Christ.

1) *Difference of religion.* This invalidating impediment involves only a Catholic who wishes to marry an unbaptized person. It is not present when the Catholic wants to marry a validly baptized person of a non-Catholic but Christian sect though even such marriages are forbidden to Catholics unless there be a grave reason for entering them. The impediment of difference of religion, i.e. between a baptized Catholic and a non-baptized person, may be removed by a dispensation of the Catholic Church. If a marriage was entered into by two such persons without the removal of the impediment (e.g. because the unbaptized person lied about his religious state), the marriage would be invalid.

2) *Sacred orders.* This invalidating impediment involves all men who have received the orders of subdiaconate, diaconate and priesthood.

3) *Religious vows.* This impediment to marriage involves all men and women

who have, by solemn vows, accepted the obligations of the religious life.

4) *Abduction*. This impediment is defined as the violent kidnapping of a woman, or the forced detention of a woman, for the purpose of entering into marriage with her. It is an application of the principles set down above, that consent to marriage must be free, not induced by any measures of force. Therefore it would invalidate even marriages of unbaptized persons if the unwillingness of the woman could be proved.

5) *Crimes against marriage*. Such crimes, which invalidate marriage unless a dispensation is obtained from the Church, are the following: a) adultery combined with a promise of marriage to the adulterous partner; b) adultery combined with the murder of the married person's partner; c) adultery combined with an attempted marriage; d) the murder of a married person's spouse, cooperated in by the married person and a lover whom he (or she) wants to marry. These are so heinous an attack on marriage that the Catholic Church makes

them an invalidating impediment to marriage for any baptized couple that commits them.

6) *Affinity*. This is the impediment to marriage that arises between married persons and the relatives of their spouses. It makes marriage invalid (unless a dispensation be obtained from the Church) between the husband and all the relatives in the direct line of his wife, and between the wife and all the relatives in the direct line of her husband. (The direct line is that of father-son-grandson, etc.; mother, daughter, granddaughter, etc.) The impediment of affinity also makes marriage invalid with collateral line relatives of one's husband or wife, unless a dispensation be obtained, to the second degree, i.e., first cousins and brothers and sisters.

7) *Public immorality*. This impediment arises out of the situation in which a person has attempted an invalid marriage, or has lived in public concubinage with another, and makes marriage invalid between that person and the relatives in the first and second degree of the direct line of the sinful partner. This simply

means that a man who has been living in public sin with a woman, or who attempted an invalid marriage with her, cannot validly marry her mother or her daughter, nor her grandmother or her granddaughter, without a dispensation from the Church.

8) *Spiritual relationship*. This is the impediment to marriage that arises from the administration of the sacrament of baptism. It prevents marriage, unless a dispensation be obtained, between the one baptizing and the one baptized, and between the baptized and the official sponsor.

9) *Legal relationship*. Here the Catholic Church accepts whatever impediment to marriage the civil law of a given place has set up between legal parents and their adopted children. The civil law thus becomes the law of the Church in this regard.



III. Grounds for the Dissolution of Marriages.

The question here is: can the Catholic Church ever actually dissolve a marriage bond that up to the time of the dissolution was valid? There are just two kinds of cases in which she can:

a. The first is the case already suggested, in which unbaptized persons are involved. The fact that the Church can, in such circumstances as are outlined below, dissolve the marriages of unbaptized persons, is made clear from the words of St. Paul in his first epistle to the Corinthians, chapter 7, verses 14-16. These words of St. Paul are translated into the following principle of law:

A legitimate marriage of two infidels (i.e., non-baptized or invalidly baptized persons) can be dissolved when either one of the partners is converted to the true faith while the other remains a pagan, and under the following conditions: 1) if the unbaptized partner neither wishes to be converted

nor to live with the one who is converted; 2) if the unbaptized partner wishes to live with the converted partner, but neither peacefully nor without danger to the latter's religion. Before the Church grants such a dissolution of marriage, she insists that the unbaptized person be approached and asked whether he (or she) wishes to be converted or at least to live peacefully and without giving scandal to the converted spouse. The Holy See can dispense with this requirement, but does so only when there is clear proof that the answers to the questions that should be put to the unbaptized person would be in the negative.



The principle behind the above law, which is called the Pauline privilege when applied to a specific case, can be extended, but only by the Holy See itself, to marriages of two non-Catholics, one of whom was certainly or doubtfully baptized, and the other of whom was certainly never baptized. Even such a marriage can be dissolved by the highest authority in the Church under these conditions: 1) if one of the persons becomes a sincere Catholic; 2) if there is moral impossibility of inducing the two persons to live peacefully together; 3) if there be no grave scandal resulting from the dissolution; 4) if there be a grave cause for dissolving the marriage. The fulfillment of all these conditions must be fully documented and proven before the Holy See will act on the case. Indeed, the fact that one of the persons was never baptized is so important in these cases that the Church insists that exhaustive efforts be made to offer proof of this before she will act on a case.

Thus the Catholic Church can dissolve certain marriages that were previously

valid only by natural law. But here it should be stated again that the Catholic Church can never dissolve a valid, consummated marriage of two validly baptized persons, whether they were baptized in the Catholic Church or in some non-Catholic religious sect. If a person was baptized outside the Catholic Church, and it can be proved that the baptism was invalid (because no water was used, or the wrong words were said, or there was no intention of baptizing at all), then that person falls into the class of the unbaptized.

b. The second case in which the Church can dissolve a marriage is that in which the marriage contract was validly made but was never consummated by the right use of the marriage act.

When a marriage contract is never consummated, there is always some doubt as to whether it was sincerely made. But even assuming that the contract was truly entered into, the Church can dissolve the marriage if it can be proved by one or

both the partners that it has never been consummated. Consummation is considered necessary for the completion of the marriage contract; without that there is always ground for dissolving the contract.



It is only within the framework of laws governing marriage here set down that the Catholic Church can either declare marriages invalid, or dissolve them. It is only when reliable proof that one of the invalidating defects outlined here has been present in a marriage from the beginning and has never been removed, that the Church can declare a person free to marry someone other than the partner to their defective marriage. It is only if there is reliable proof that married persons were never baptized, or that their marriage contract was never consummated, that the Catholic Church can use the power to dissolve marriages under the conditions set down in the above.

One brief warning should be added. Because of the fact that the Catholic Church presumes all marriages to be valid until proof beyond question is brought by reliable witnesses against their validity, it usually takes time to obtain the final declaration of nullity. What seems like good proof to an ordinary person, may not stand up in a court at all. Therefore those who seek the special consideration that is involved in a declaration of nullity must have patience, and if they want God's blessing and God's grace, not use delays in the handling of their case as pretexts or occasions for maligning the Church, or thrusting themselves into habits of sin. The Church has an obligation to protect marriage; and the best proof that she carries out this obligation is that she is never hasty in declaring marriages invalid or dissolved.



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