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Is Annulment Just Catholic Divorce? Our Sunday Visitor

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A canon lawyer explains the difference

By Dr. Edward Peters

You often hear it said that annulments are just a Catholic version of divorce. But nothing could be further from the truth. The differences between divorce and annulment are profound. At the most basic level, divorce and annulment represent two utterly different attitudes toward the truth in general, and the permanence of marriage in particular. In brief, *divorce* reflects the civil state's contempt for the facts surrounding any given marriage. *Annulment*, on the other hand, conveys the Church's humility before the truth of the situation and a willingness to go wherever the truth leads.

Considerable confusion about divorce and annulment springs from confusion about marriage itself. So let's first clarify certain aspects of marriage, and then apply those insights to the issue of divorce and annulments — or, as they are technically known, "declarations of nullity."

What Is Marriage?

For Catholics, marriage is more than a convenient way to open joint checking accounts or save money on medical insurance. Indeed, for Catholics, marriage is more than a relationship between a man and woman lasting till death and serving as a safe harbor for children. While authentic marriage includes and builds on such things, the Church teaches that there is more to it: Christian marriage is a sacrament instituted by Christ. It is a privileged way for baptized couples to live out their love for each other and to mirror the love between Christ and His Church.

Just as Christ could never abandon His Church nor the Church forsake her Founder, so Catholic husbands and wives may never leave each other and take up with others. Of course, the demands of a lifelong commitment are heavy, and they chafe us especially in an age where so many things are considered temporary or disposable. Nor can we deny that many, probably most, Catholics fail at times to live up to the nobility of sacramental marriage.

Christ knew this would happen. So He left several means, notably the sacraments, to repair the damage of sin. Every day, with trust in His grace and renewed charity toward each other, Catholic married couples should strive to live their vocation to marriage to the fullest.

At the same time, though, we must avoid over-spiritualizing marriage; that is, treating it as if it were purely a religious relationship. The Church did not invent marriage; rather, this natural institution was raised to a new level of meaning by Christ, but in a way that did not destroy its natural foundations. Respecting the natural foundations of marriage brings us closer to understanding the difference between divorce and annulment, for no sacramental marriage can exist unless the basic requirements for marriage itself are satisfied. Let's consider this point more closely.

Contract or Covenant?

For centuries, most Catholic teaching explained marriage as a kind of contract. This analogy helped countless generations understand that marriage requires elements such as mutual consent, equitably shared rights and duties, and so on. Contract-based explanations of marriage helped civilize societies in which marriage was frequently imposed (usually on women) as an expedient, or was seen as a relationship whose privileges ran one way while duties ran the other.

Despite its many strengths, though, there were certain weaknesses in the marriage-as-contract model. One of the most glaring was that societies usually allow people to break contracts if they are willing to pay for the consequences their breach will cause for the other side. Obviously, the Church could never allow one side to break the marriage contract simply because he or she was willing to pay money — for example, alimony — to an abandoned spouse. Thus the contract analogy limped at times.

Since the Second Vatican Council (1962-1965), Catholic teaching has increasingly compared Christian marriage to a covenant, a special kind of contract that neither side can break. Even if one party violates the terms of the covenant, the other side is still bound to honor it. Moreover, covenant language, while preserving the best insights of the contract analogy, makes it easier for people to see the vital place that God has in every sacramental marriage, a consoling thought when one, or even both, spouses act in ways contrary to the demands of Christian marriage.

Nevertheless, regardless of whether we use a contract or covenant model, the idea that marriage, even sacramental marriage in the Church, includes basic legal requirements means that every marriage must

be able to pass legal muster. If a specific marriage is gravely lacking in one or more of these legal elements then, whatever else it might be, it is simply not a marriage. The question of how these legal requirements are assessed and the degree to which they are respected, in turn, moves us closer to seeing the real differences between divorce and annulment.

The Nature of Civil Divorce

Every political society has procedures by which the contracts apparently entered into by its people can be objectively assessed. We call this the civil court system and it follows, of course, civil law.

Likewise the Church, that great society of Christians, has special procedures for determining whether the marriages seemingly entered into by its members are really marriages as proclaimed by Christ and His Church. This process occurs in a Church court, known as a tribunal, and it follows canon law. With these points in mind, we are ready to see how divorce in the state differs dramatically from annulment in the Church.

In the American setting, there is no such thing as permanent marriage in the state's view. So anyone who wants a civil divorce will eventually get one. The state accepts, as it were, the fact of the marriage shared by two people, but pretends to be able to say, basically upon the request of either spouse, that what used to be a marriage now is no more.

Granted, there might be a price to pay in terms of alimony; there might be delays while property issues are negotiated. But eventually, every request for a civil divorce will be granted. The state simply does not care what marriage really is and refuses to accept for itself, or impose on its subjects, the consequences of permanent marriage.

The Church, on the other hand, while she also presumes the reality — technically, the “validity” — of the marriage in question, does not pretend to have the power to dissolve marriages upon request. To make such pretense would render the Church unfaithful to her Founder, Jesus Christ, an unthinkable proposition. Instead, the Church does what every mature legal system does for its people: She allows them the opportunity to have an objective assessment of the character of the commitment they seem to have made.

The Church does this through the annulment process, through which persons may try to show that the relationship in question was not a valid marriage in the eyes of the Church. They might be able to prove that claim. Then again, they might not. But if a marriage, already presumed to be valid under canon law, cannot be proven to have been null from the beginning, then no matter how much either or both parties might want the annulment, it will not be declared. Quite simply, the truth of the matter will not permit it.

The callousness, one might even say contempt, with which the state regards marriage, and the esteem

accorded it by the Church, could not be in sharper contrast. Seeing this difference makes us much more able to appreciate the crucial distinction between a civil divorce and an ecclesiastical declaration of nullity. Divorce mocks the efforts needed to live in a real marriage, while annulments make sure those efforts are not applied in a situation that is not a true marriage.

— *Edward Peters has doctoral degrees in canon and civil law. He is the author of "Annulments and the Catholic Church: Straight Answers to Tough Questions" (Ascension Press, 2004) and maintains a prominent canon law website at www.canonlaw.info.*

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