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James A. Coriden

Not Null and Void, but Invalid

A significant switch in terminology is taking place in the way that canonists refer to the irregular former marriages of divorced and re-married Catholics.

In the past and even at present when the Church's tribunals judge a prior marriage to have been canonically deficient they declare its *nullity*, they grant an *annulment* of the marriage, they say in effect that it was *null and void*. In the future, marriage courts will more often use the expression *invalid* to describe the same marriage. The change in terminology has good reasons behind it, and it may be pastorally helpful.

Fr. Lawrence Wrenn of Hartford, Connecticut, the dean of marriage canonists in North America, has set this change in motion. Father Wrenn is a highly respected scholar and judge who has devoted himself to this ministry for decades. His authority and his writings are relied upon in marriage tribunals more than any others. Father Wrenn's recent presentations on this topic will, in all likelihood, cause this shift in terms to come about. His widely used book *Annulments* (published in six editions by the Canon Law Society of America) in its forthcoming seventh edition will bear the title *The Invalid Marriage*.

What is the difference between *invalid* and *null*? Heretofore, nearly all canonists would have said that the two terms are synonymous. Despite outward appearances to the contrary, canonically speaking there was no marriage. For some canonical reason, either a defect of form (Catholics marrying outside the Church), the existence of an impediment (like the bond of a previous marriage), or some defect of consent (force and fear, woeful immaturity), the marriage was invalid, a nullity.

Now, under Father Wrenn's insightful leadership, canonists are more carefully and accurately distinguishing between marriages which are

null, meaning no marriage at all, and those which *are* marriages, but juridically deficient marriages, that is to say, *invalid* marriages.

The reasoning goes back to an earlier canonical view which distinguished between a marriage which is valid, *irritum*, infirm, defective, ineffective, and one which is null, no marriage at all. The latter is a non-marriage; it lacks even the *figura* of a marriage.

One argument for the distinction is based on the canonical practice of the convalidation of a marriage which was invalid due to the presence of a diriment impediment. When the impediment ceases (e.g., a former spouse dies), the marriage becomes valid. This is an indication that a marriage existed; it was an invalid marriage, but it was not a nullity. (A renewal of consent is required in such convalidations, at least by the party who was aware of the impediment, but only as a requirement of ecclesiastical law, that is, binding only on Catholics. Cf. canon 1156 of the 1983 *Code*.)

A further indication is based on the positions of two Roman congregations (Doctrine of the Faith and Sacraments) which have recognized that invalid marriages can cause the existence of the impediment of prior bond (*ligamen*; c. 1085). Even though they were not canonically valid, they were marriages; they were not simply nullities.

Finally, the distinction is supported by Pope John Paul II's apostolic letter on the family (*Familiaris consortio*, Dec. 15, 1981; par. 82). The Pope wrote about Catholics who contract merely civil marriages. They are not like those "people living together without any bond at all" because "there is at least a certain commitment to a properly defined and probably stable state of life." The Pope recognized that these Catholics who are married outside the Church are married, even though the Church judges their marriages to be invalid for lack of canonical form. In other words, there is a distinction between a marriage which is invalid and no marriage at all, a nullity.

An opinion of the Sacred Roman Rota, quoting this paragraph of *Familiaris consortio*, concluded that "a civil marriage should be more properly regarded as a marriage that is juridically inefficacious" (*Coram Funghini*, 6-30-88). The marriage is not nonexistent, and it represents much more than concubinage or cohabitation.

Canonically a valid marriage is one which produces a bond (*vinculum*; natural or sacramental) between spouses, a bond which is perpetual and exclusive (c. 1134). An invalid marriage is one in which a man and a woman have given an eternal manifestation of matrimonial consent ("I take you . . ."), but due to some obstructing cause (e.g., lack of form, an impediment, defective consent) did not have the effect of producing a marriage bond. The consent was ineffective.

When a marriage tribunal discerns that such a marriage was invalid it finds that it failed to meet the minimum standards of soundness re-

quired by the Church for a valid marriage. It finds that the marriage suffered from some substantial defect.

What difference does it make? Does the canonical distinction between *invalid* marriages and those which are *null* have any benefits? Yes, it has two: (1) it comes a little closer to reality and (2) it may help avoid some common misunderstandings.

(1) The human experience of marriage, even a failed marriage, is real and powerful. It is not nothing. There was a human relationship, time spent together, love given, children cherished—usually a large and meaningful slice of two human lives. To refer to this experience as a real marriage, but one which suffered from a juridical obstruction, comes a lot closer to describing that reality than to call it null and void, not a marriage at all.

(2) Annulment language is frequently misunderstood. It seems to disregard or even deny the real experience of marriage. “How can you say that it never happened? It was ten years of my life.” And the inference is often made that the children born of the null marriage are therefore illegitimate, even though this is most often not the case (c. 1137; and canonical illegitimacy has no effects in the North American context in any event).

The substitution of “invalid marriage” for “null and void marriage” may help to take the curse off the tribunals’ processes of reconciliation and alleviate some small measure of pastoral burden and personal pain.

[Father Wrenn’s paper on this matter can be found in the Proceedings of the Canon Law Society of America, vol. 60, 1998; his book *The Invalid Marriage* is available from the Canon Law Society of America, CUA, Washington, D.C. 20064.]

James A. Coriden is professor of Church law at Washington Theological Union. He is one of the editors of the Canon Law Society’s forthcoming new commentary on the Code. His most recent book is The Parish in Catholic Tradition: History, Theology and Canon Law (Paulist Press, 1997).