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THE GROUNDS FOR NULLIFYING CATHOLIC MARRIAGES

Since marriage is a contract, it falls under the regulation of law. What is special about Catholic marriages is that two perfect societies — the Church and the State — both have an interest and claim in them. The State often makes claim to a jurisdiction over the matrimonial contract of those who are baptized beyond its competence in the judgment of the Church. Yet, the Church does acknowledge a twofold jurisdiction over this contract — jurisdictions which do not conflict with each other, but, rather, have each their own proper area of competence.¹

One whose profession is the practice of civil law may feel that he would do well to leave to the legal experts of the Church whatever pertains to Canon law in the marriage contract. However, while it is true that for the most part he must leave the actual practice of Canon law to those authorized to act in the ecclesiastical courts, yet he will undoubtedly meet with situations in which he can be of greater help to his clients, if he possesses a fairly adequate knowledge of the laws of the Church on marriage. Concern for the status of Catholic clients with respect to the discipline of the Church should be felt, of course, by every Catholic lawyer, but conscientious non-Catholic lawyers also will want to do all in their power to counsel their Catholic clients in a manner that conforms to the law of the Church. For this reason a brief survey of the regulations of Canon law seems to have a rightful place in a journal devoted to civil law.

Futhermore, the alert lawyer cannot help but occasionally cast a critical eye on the legal practice in the ecclesiastical courts. He may hear or read slurs against the Church in the manner in which it handles marriage cases. A few months ago

¹ CODEX IURIS CANONICI, canon 1016 (1918).

a group of Anglican clergymen cast suspicion on the very integrity of the Catholic Church on the question of marriage. They claimed that there is:²

. . . a certain duplicity which is to be detected in the Roman Catholic official mind. . . . The Roman Church officially upholds the plain teaching of Christ against remarriage after divorce. But in practice it allows it by means of various legal devices — chiefly by multiplying the possible reasons for annulment. Thus the Roman Church manages to gain on the one hand the reputation for strictness, but on the other is able to allow the remarriage of those it particularly desires to please.

Instead of stirring up angry resentment, charges such as this can awaken Catholics to their need to know better and more fully the practice of their Church. As a matter of fact, sometimes these attacks from outsiders bring out in the open matters that secretly trouble uninformed individuals within the fold. For example, well known people, such as movie stars, are married in the sanctuary of Catholic churches. They have been married at least once before, and their former partner is still living. The newspapers give the event great publicity. Catholics shake their heads shocked and puzzled: how come? Does the Church indeed accomodate its laws to favor wealth and renown?

Does the Catholic Church, as these Anglican clergymen charge, cunningly provide for the remarriage of those who are unhappy in their present marriage by “multiplying the possible reasons for annulment”? There is no denying that the legal obstacles which the Church lays down to prevent certain persons from marrying, constitute grounds for an annulment where they are discovered after the ceremony. Call them, if you will, loopholes that weaken the close grip of the presumed marriage bond. But it is sheer nonsense to assert that the Church sets up these obstacles to the validity of the marriage contract with the express purpose of multiplying reasons for

² INFALLIBLE FALLACIES, by “Some Priests of the Anglican Communion,” quoted in *Time*, Oct. 26, 1953, p. 69, col. 2.

dissolving the marriages of those whom it desires to please. By laying down these obstacles the Church is looking to the good of the sacrament of matrimony and of religion, not to the weakening of the permanence of the marriage contract.

I. *Nullifying Causes Resulting from Defects in the Act Contracting Matrimony*

Church Law decrees that the legitimately manifested consent of the parties themselves, who meet all the requirements of the law, brings the marriage into existence.³ It adds immediately that no human power can substitute for this consent. Since the will of the man and the woman who join in wedlock has such an essential role in bringing about the marriage, the Church has the duty to set forth in law the requirements for their act of consent to be legally binding. Consequently, the Church has written into its Law that certain kinds of error or ignorance,⁴ certain types of exclusion of full consent,⁵ and certain kinds of fear⁶ render the matrimonial contract invalid.

There is no need here to go into the technical refinements of Canon Law on these points. Suffice to say that not every kind of error, nor every kind of fear, stands in the way of the validity of the contract. Nor does the mere claim of the couple that they did not have the serious will to contract marriage as understood by the Catholic Church suffice to procure from the Church the declaration of nullity. All must be proved according to the strictest legal standards. The courts of the Church take the stand that the marriage must be held as valid until proven otherwise.⁷ The whole burden of proof rests on those who attack the validity of the matrimonial contract; they must furnish convincing evidence for their case.

³ CODEX IURIS CANONICI, canon 1081 (1918).

⁴ *Id.*, canons 1082-85.

⁵ *Id.*, canon 1086.

⁶ *Id.*, canon 1087.

⁷ *Id.*, canon 1014.

A point of particular interest here is that in these matters the Church has done hardly more than to express in legal terminology what the nature of every contract in general, and the conjugal contract in particular, demands. Civil societies legislate on the conditions requisite for the validity of contracts. They carefully frame laws in order to safeguard the freedom of consent on the part of the contracting parties. The society which is the Church does the same. For contracts to be binding in it, as well as in civil society, they must meet the requirements laid down by law. It goes without saying that because of the precise conditions laid down in the laws of both societies, it will happen occasionally in both that contracts will be found to be invalid due to failure to meet all the required conditions. Surely no one will accuse the State of laying down these strict requirements for the validity of contracts in order to give plenty of opportunity for the lawyers of interested parties to discover reasons why the courts should declare contracts invalid. All the less reason is there for suggesting that the Church enacts these laws in order to multiply "the possible reasons for annulment" of the marriages of those whom it particularly "desires to please."

Civil law often requires for the validity of legal documents that they be witnessed and signed before a duly authorized notary. The Church exacts a similar action in the conjugal contract. Every Catholic who wishes to marry must satisfy the "Form" established by the Church, that is, his conjugal contract must be witnessed by a priest duly authorized to act in that capacity, usually the parish priest. This legislation of the church stems from her doctrinal teaching that, when the parties to the contract are baptized, marriage is a sacrament and consequently an act not only affecting religion but having deeply religious significance in itself. The Church feels that it has the duty to impress upon its members this truth. In holding them to the "Form," it says in effect to the couple that they must start their married life at the altar, because they

will not be able to live well in married life except through the divine helps gathered from the altar.

The Church believes firmly that the marriage of one of its members is so deeply involved in its own proper faith and worship, that the attempt of a Catholic to contract marriage before a non-Catholic minister of religion is a serious offense against the faith and the unity of the Church. For this reason it not only refuses to recognize the validity of such a contract, but also excommunicates the offender.⁸

Everyone who has been baptized a Catholic, or who has been converted to the Church is bound to comply with the "Form" of marriage. Failure to meet this requirement renders the marriage contract invalid.⁹ Here we find another cause for the Church authoritatively to declare some marriages null and void. Who in all sincerity could think that the Church lays down this requirement for the validity of the marriage of Catholics in order to offer an opportunity for annulment to those of the faithful whom it desires to please?

II. *Impediments to the Marriage Contract*

Failure to comply with the "Form" of marriage (required of those who have been baptized Catholics or who have entered the Church after other baptism) fear, error, and the withholding of consent to any of the elements essential to the marriage contract, constitute obstacles to the validity of the marriage. But technically, in the legal language of the Church the term matrimonial "impediment" signifies restrictions which the Church has written into law to prevent a marriage which is considered undesirable for serious spiritual reasons. Taken in this technical sense an ecclesiastical impediment to marriage may be either *impedient*, that is, it aims to prevent the marriage by forbidding it under pain of serious sin without, however, rendering invalid the contract entered into

⁸ *Id.*, canon 2319.

⁹ *Id.*, canon 1094.

in defiance of the law; or the impediment may be *diriment*, that is, it aims to prevent the marriage by standing in the way of a valid matrimonial contract. In other words, a marriage contracted under an impeding impediment is valid, but unlawful or illicit; while a marriage contracted under a diriment impediment is no marriage at all in the eyes of Canon Law. Only the diriment impediment, when present, gives the basis for an annulment. By annulment is here meant an authoritative declaration by the Church that no marriage actually existed. Do not confuse an *annulment* of marriage with a *dissolution* (complete divorce) of a true marriage. The Church, for example, has the power to dissolve a true marriage bond in some cases, as when there is occasion to make use of the Pauline privilege.¹⁰

A. *Impediments That Do Not Invalidate the Contract*

Canon Law lists the following impeding impediments:¹¹ the simple vows of: virginity, perfect chastity, not marrying, entering Sacred Orders, or embracing the Religious state; relationship arising out of legal adoption in those countries where such relationship renders marriage unlawful but not invalid; difference in religion where one of the parties is a Catholic, the other, a baptized non-Catholic who worships in some non-Catholic religion.

A few observations on these impeding impediments will suffice here. The simple vow of perfect chastity renders a subsequent marriage contract illicit, but valid.¹² This law

¹⁰ *Id.*, canons 1120-27. The Pauline Privilege is so named for St. Paul who promulgated it in his Epistle to the Corinthians: "But if the unbeliever departs, let him depart. For a brother or sister is not under bondage in such cases." (I Cor. 7:15-16). The Church has authoritatively interpreted this to mean that a valid and genuine marriage between two non-baptized persons can be completely dissolved by the Church in the event that one of them embraces the Catholic faith and is baptized, and the other refuses to live in peace and harmony under the changed religious situation. Where this condition exists, the Catholic spouse can petition the Church for a dissolution of the marriage contract, and if the petition is granted, he is free to marry another.

¹¹ *Id.*, canons 1058-66.

means that the vow that binds most Brothers and Nuns in the Religious Communities in this country does not void the marriage contract. The Church makes a distinction between the simple vow of Religion by which one does not completely alienate his right to own property and to contract marriage, and the solemn vow of Religion in which the alienation is complete, such as to bar the validity of the marriage contract. We shall encounter this latter type when we come to the diriment impediments.

As to the impeding impediment of mixed religions, here are the very words of Canon Law:¹²

In the severest way the Church prohibits everywhere marriage between two baptized persons, one of whom is a Catholic, the other, a member of an heretical or schismatic sect. Moreover, if there is danger of the perversion of the Catholic, or of the child, the marriage is forbidden by divine law.

One of the main reasons for this law is the conviction of the Church that conjugal life with one who is a communicant in a non-Catholic religious group places the Catholic in the constant presence of the occasion of sin. The sin to which he or she is thus exposed may be either the loss of faith or the violation of the law of God or of the Church. An adequate explanation of this attitude of the Church which is so often misunderstood especially by those not of the Catholic faith cannot be attempted here. However, it might be well to point out that this discipline of the Church has its roots in the doctrinal teaching of the Church, just as the tenets of civil law have their roots in the philosophical, and social doctrines and historical accidents of other ages. Thus the Church firmly holds as a divinely revealed truth that faith, including adherence to the Catholic Church as the one true Church of Christ, is a *gift of God*; that assent to the Catholic faith means conformity to the movement of God's grace within the soul. As a consequence, so the Church reasons, any turning away from

¹² *Id.*, canon 1058.

¹³ *Id.*, canon 1060.

the Catholic faith once possessed, constitutes a turning away from the grace of God, that is, a sin.

Mixed marriages are one of the most frequent causes of defection from the Church. This is, perhaps, not so much because of direct influences against the Catholic faith itself, as because of moral considerations. Many a non-Catholic, to give just one instance here, will not scruple to carry out habitually certain practices in the moral order that gravely offend Catholic conscience. She, let us say, may not want children, and no one can convince her that it is wrong to make use of instruments of contraception to prevent a child issuing from coition. The Catholic husband ardently wants to complete the conjugal act. Yet every time he approaches her he knows that he commits mortal sin. If he yields to the temptation, and he is constantly in the proximate occasion of it, he starts a chain of events that lead to the formation of an immoral habit which prevents him from approaching the sacraments of Penance and Holy Communion. Yet, as the Church teaches, he needs these sacraments to nourish his Catholic life. With his moral conscience deeply wounded, his faith totters, and not infrequently collapses. This is but one of the many moral difficulties to which a Catholic exposes himself, if he marries one who does not share his faith.

Recent statistics taken in this country bear out what the Church has always contended, namely, that mixed marriages constitute serious peril to Catholic faith and Catholic moral convictions. Not all marriages, of course, wherein there is a difference of religion present a serious threat to the faith. Yet the grave danger is actually verified often enough to justify the general law forbidding mixed marriages. For this reason, too, Canon Law asserts that the Church will not grant a dispensation from this prohibition unless:¹⁴ 1) just and serious reasons urge it (as, for example, the woman is already preg-

¹⁴ *Id.*, canon 1061.

nant by the man,¹⁵ the woman is advanced in years with little likelihood of finding another man willing to marry her); 2) the non-Catholic party agrees to remove all danger of perversion to the faith and moral conduct of the Catholic, and both parties agree to have the children baptized and brought up as Catholics; 3) there is moral certainty that this agreement will be carried out faithfully.

B. *Impediments That Invalidate the Contract*

So much for the impedient impediments. Now for the diriment type, that is, those that bar a valid matrimonial contract. Canon Law lists the following impediments to be of this type:¹⁶ underage; sexual impotence; a marriage tie already existing; disparity of worship, wherein one is baptized, the other not; Sacred Orders (for example, the priesthood); Solemn Religious vows; the actual situation of a woman who has been forcibly brought into the power of the man who wants to marry her; specific crimes against marriage (adultery with the promise of marriage; cooperation in the murder of one of the spouses); certain kinds of relationship. Perhaps a short comment on each of these impediments will prove helpful.

1. *Underage.* Canon Law requires that the man shall have completed his sixteenth, and the woman her fourteenth year, before marriage.¹⁷ Inasmuch as the Church is the author of this law, it binds only those who are baptized, since non-baptized persons are not subject to the authority of the

¹⁵ This does not mean that the Church insists that a man marry the woman whom he has made to be with child. Such a one has, of course, the obligation in justice to bear the burden of fatherhood, and, unless serious reasons oppose it, he should marry the woman in order to protect her good name and give a legitimate status to the child. But often marriage under such conditions does not prove a happy one. Experience has shown that it is not wise to put pressure on the man to marry the woman.

¹⁶ CODEX IURIS CANONICI, canons 1067-80 (1918).

¹⁷ *Id.*, canon 1067.

Church. The Church, therefore, recognizes as valid the marriage, for example, of a Jew with a Jewess, one or both of whom were under this age at the time of their wedding. Child marriages are common in some non-Christian areas such as in India. The Church acknowledges the validity of the marriage of these children, provided they were old enough to make a valid contract, that is to say, that they were of the mental age capable of knowing the essentials of the conjugal contract.

As a rule, however, all societies see the need of determining by law an age well beyond the year when the child normally is capable of the full exercise of free will (the age of reason), at which he or she can enter into a legally binding contract.

Now marriage is a contract which has the most serious consequences. Moreover, it is not, like other contracts, rescissible by the mutual consent of the contracting parties. If it were a matter of the best interests and happiness of the parties only in this life, the conjugal contract would be serious enough. But the impact of marriage extends beyond this life, to the best interests and happiness of the next life. The Catholic youth has other ways of life open to him, ways of life to which he may be better fitted and to which God calls him. If he chooses married life, he renounces the priesthood and the Religious life. For the majority, of course, marriage is the sort of life that is best for them; their divine vocation is to marry. But to make the momentous decision one way or other a man must have a mature understanding of himself and of the world in which he lives. A childish mind cannot sufficiently weigh in the balance the elements that enter into the choice of state of life. Prudence, then, dictates the action of the Church in its legislation on the minimum age for the validity of the matrimonial contract.

2. *Sexual Impotence.* The canon reads thus: "Antecedent and perpetual impotence, whether on the part of the man or on the part of the woman, whether known to each other or

not, whether absolute or relative, prevents marriage by the very law of nature.”¹⁸

Church Law here recognizes a clear-cut distinction between impotence and sterility. The latter designates the inability to have a child, the former the inability to have complete sexual relations. In other words, sterility means that the union is unable to produce offspring because of internal deficiencies in one or in both, other than that of the inability to perform the complete act of coition. Sterility can be caused by *physical* conditions, such as old-age or some bodily abnormality due to which the man is unable to produce vital sperm; or by *psychic* conditions, such as fear. Sterility does not constitute a bar to valid marriage, as is evident from the lawful marriage of elderly people. Impotence, on the other hand, does stand in the way of a valid marriage. As the canon expressly states, this impediment is not of ecclesiastical origin, but originates from nature itself. Hence the Church cannot dispense from it.

A glance at the essential nature of marriage should bring to light the reason why impotence bars valid marriage. The matrimonial contract comprises basically the exchange of rights to the act per se ordained to the procreation of children. Now a man who is permanently incapable of an act cannot validly contract to perform that act. One cannot give, what he does not possess, nor contract to give what he will certainly never be able to give. A singer, for example, who has lost his vocal chords through surgery cannot contract to give a vocal concert.

Now the fact that the primary purpose of marriage is the bearing of children determines the essential element involved in the matrimonial contract, namely, the act which is per se ordained to procreation. In their wedding the couple do not contract to have children, since the de facto fruitfulness of their union lies beyond the power of their wills. Further, the actual ability of a couple to bear a child is not verifiable until

¹⁸ *Id.*, canon 1068.

after they have had relations. If this be demanded for a valid marriage, the couple would positively know that they are married only on the appearance of a child. This is absurd. We must say, therefore, that to constitute a valid matrimonial contract the couple must mutually exchange rights to the act of sexual copulation which is the prime prerequisite of child-bearing, and which is normally within the power of both to give willingly.

Absolute impotence means that a man or a woman labors under such an abnormality that he or she cannot have complete sexual copulation with anyone; *relative* impotence means that this particular couple is unable to complete the act. To invalidate the matrimonial contract the impotence must be permanent, as it is not essential to the contract that the act be performed at a given time. Furthermore, it must be antecedent to the contract, since whatever develops subsequent to the valid contract, cannot change the fact that the couple validly entered into a permanent state of conjugal relationship.

A detailed study of just what constitutes sexual impotence, that is, what defects render one incapable of marriage, need not detain us here. It might be well to point out, however, that the experts in this matter do not fully agree on all points. It is certain and agreed by all, for example, that a man who because of physical or psychic reasons is totally unable to have an erection of the penis, or who lacks both testicles, is impotent. Similarly, a woman who lacks the vagina, or whose vagina for one reason or other is unable to open to receive the male organ, is impotent. Some contend that a man deprived of both deferent ducts, or a woman lacking the uterus, is incapable of the matrimonial contract. Others contest this point of view. A controversy among the experts of this kind has little or no effect on the legal aspects of marriage. Where there is doubt of this kind, the individual retains his right to marry. On the other hand, a marriage in the eyes of the law is valid

until proved invalid. Hence, the contention that a man or a woman lacks an organ or a part of an organ considered by some, and disputed by others, to be a necessary constituent of sexual potency will not be accepted in ecclesiastical courts as a valid reason for the declaration of nullity of that marriage.

3. *A Genuine Matrimonial Contract Already in Existence.* This impediment stems, of course, from the fact that marriage is essentially monogamous.¹⁹ The right to the conjugal act which one party gives to the other is exclusive and perpetual until death. Hence, once a man has given the right to a woman, he is no longer legally capable of disposing of it to another. He no longer possesses ownership over himself as far as that act is concerned.

The de facto existence or non-existence of the marriage tie is the determining factor covering all questions on the validity of a subsequent marriage. If, for example, the soldier-husband of a woman has been declared dead by the army, she may obtain permission from the Church to marry another. If, however, the army's information was incorrect and the husband returns very much alive, there can be no doubt that he, and he alone, has the claim to be the woman's lawful husband. The Church's permission to go ahead with a second marriage, did not constitute a dissolution of the first marriage bond.

Complex situations touching on this point can arise. Let us take a case like the following: A married man takes up residence where he is not known, and there falls in love with another woman. He deceives the Church authorities about his previous marriage, and goes through the marriage ceremony with this woman thinking all the while that this ceremony is invalid, but wanting to do all that he can to be united with her. Later on he discovers that his first marriage was invalid for some reason. This would disclose the fact that his second marriage was really valid, provided he had the sincere pur-

¹⁹ *Id.*, canon 1069.

pose when he went through the ceremony of uniting himself in marriage to the woman as far as he could.

4. *Disparity of Worship.* A barrier preventing valid marriage stands between a person baptized in the Catholic Church, or a convert to the Church after other baptism, and a non-baptized person.²⁰ The fact that one has not been baptized, as the situation, for example, of a Jewess, establishes a diriment impediment to marriage with a Catholic, and in this respect differs greatly from the impediment to marriage that exists between a baptized non-Catholic and a Catholic. It should be noticed at once, however, that when a dispensation is requested from the latter impediment, it is the practice of most chancery offices to attach the further dispensation from the disparity of worship as a precautionary measure. In this, as in the admission of converts, the Church takes the stand that baptism administered by non-Catholics may be invalid. Before a marriage, therefore, the Church accepts the possibility that the non-Catholic may not be validly baptized and acts accordingly. But after the marriage the Church courts hold the baptism of non-Catholics to be valid until proved otherwise. Here, as elsewhere, the position of the Church holds, namely, that a marriage stands as valid before the Law; the burden of proof rests on him who challenges its validity.

Here again we have a case of Canon law derived from the doctrinal teaching of the Church. The fact that one has not been baptized carries with it not only all the objections to marriage with a Catholic, such as we have already seen relative to mixed marriages, but more. The Church teaches that baptism makes the recipient a child of God, a member of a "chosen race, a royal priesthood, a holy nation, a purchased people" (I Pet. 2:9). Baptism for the Church has a significance that goes to the very heart of Christian worship and belief. For this sacrament unites the recipient in intimate

²⁰ *Id.*, canon 1070.

union with the Saviour. It represents a despoiling of all for which Christ died, and a taking on of a new life together with Him (St. Paul to the Romans, 6:1 ff.). One who has not been baptized, on the other hand, by the very fact that he rejects baptism represents all that stands in opposition to Christ. He may be a very good man, as a matter of fact. But his status as one who rejects baptism, puts him in principle in the position of being anti-Christian. I say, "in principle", because that is what his status represents, even though at heart he does not attack Christianity. The Church teaches, further, that in his marriage the Christian should reflect the symbol of the union of Christ with the Church. In the light of this teaching the incongruity of a marriage between a baptized and a non-baptized person seems obvious. The two are poles apart in matters of the deepest import. That is the way the Church feels about it and is why it throws an invalidating barrier between the two.

If it is reasonable and just for the State at times to bar valid marriage between certain individuals because of differences of color, official status, and the like, when it prudently judges that this is for the best interest of the common good, it is certainly reasonable and just for the Church to bar marriage between the citizens of her society and foreigners to the grace of Christ.

5. *Sacred Orders.* Chief among the Sacred Orders is the priesthood. The other two, diaconate and subdiaconate, are steps toward the priesthood. The Church holds that abstinence from marriage make a man more fit to carry out effectively the work of the priest.²¹ In his encyclical on *The Catholic Priesthood* Pius XI dwells at length on the requirement of a celibate clergy.²² He points out that a certain connection

²¹ *Id.*, canon 1072.

²² Pope Pius XI, *Ad Catholici Sacerdotii*, 34 THE CATHOLIC MIND 1 (Feb. 8, 1936).

between the renunciation of marriage and the sacerdotal ministry²³

. . . can be seen even by the light of reason alone: since 'God is a spirit,' it is only fitting that he who dedicates and consecrates himself to God's service should in some way 'divest himself of the body'. . . In the Old Law, Moses in the name of God commanded Aaron and his sons to remain within the Tabernacle, and so keep continent, during the seven days in which they were exercising their sacred functions.

But the Christian priesthood, being much superior to that of the Old Law, demanded a still greater purity. The law of ecclesiastical celibacy, whose first written traces presupposes a still earlier unwritten practice, dates back to a canon of the Council of Elvira, at the beginning of the fourth century. . . . This law only makes obligatory what might in any case almost be termed a moral exigency that springs from the Gospel and the Apostolic teaching.

This law that those who serve at the altar must remain unmarried "does not bind, in all its amplitude, clerics of the Oriental (Eastern) Churches, yet among them also, ecclesiastical celibacy is revered; indeed in some cases, especially in the higher Orders of the Hierarchy, it is a necessary and obligatory requisite."²⁴ In the Oriental Churches Sacred Orders constitutes a diriment impediment to marriage, but those who are already married are admitted to Sacred Orders. Many of their priests in parishes are married and have children. In the Western Church, however, not only do Sacred Orders constitute a diriment impediment to valid marriage, but those who are married are not admitted to Sacred Orders. Taking notice of this difference between the practice of the Eastern and Western Churches Pius XI writes:²⁵

²³ *Id.* at 56-7.

²⁴ *Id.* at 56.

²⁵ *Id.* at 59. By "Eastern" Churches is here meant genuinely Catholic groups located in the Eastern part of Europe, Africa and Asia, such as the Greek Uniates, Catholic Armenians, and the like. Some of them have branches in this country. They are in union with Rome, recognizing the authority of the Pope. Hence they should not be confused with the schismatic Eastern Churches. Their discipline regarding clerical celibacy differs from that of the Western in that they allow married men to enter Sacred Orders, while the Western or Roman Catholic Church does not permit this. As a rare and somewhat surprising exception to this rule, Pius XII recently

Notwithstanding all this, We do not wish that what We said in commendation of clerical celibacy should be interpreted as though it were Our mind in any way to blame, or, as it were, disapprove the different discipline legitimately prevailing in the Oriental Church. What We have said has been meant solely to exalt in the Lord something We consider one of the purest glories of the Catholic priesthood. . . .

6. *Solemn Religious Profession.* This diriment impediment is that Brothers and Nuns in Religious Orders, such as the Benedictines, the Franciscans, the Dominicans, cannot validly contract marriage.²⁶ In this they differ from those who have *Simple Vows* in Religious Congregations, who by violating their vow of chastity in a marriage contract, act validly but illicitly. That is, they would contract a marriage that stands as valid in the eyes of the Church, but, of course, in so acting they would commit a mortal sin and a sacrilege. Canon Law thus establishes the difference between Solemn and Simple Vows:²⁷ "Simple profession, whether it be temporal or perpetual, renders acts contrary to the vows illicit, but not invalid . . . solemn profession renders them also invalid, if they are voidable."

Religious communities of men and of women established in the last two or three centuries take simple rather than solemn vows. The explanation for this difference in the effects of the vows of the modern Religious Congregations and the anciently founded Religious Orders lies principally, I suppose, in changed political and economic conditions. The Church condescends to the exigencies of the times. Be it noted, that a priest in a Religious Congregation of simple vows has the equivalent of the solemn vow of chastity by reason of his entrance into Sacred Orders.

7. *A Woman Held Captive in View of Marriage.* The forcible seizure of a woman with the view to marriage with

gave permission for an elderly convert to the Church in Germany, who was married, to be ordained to the priesthood.

²⁶ CODEX IURIS CANONICI, canon 1073 (1918).

²⁷ *Id.*, canon 579.

her constitutes a diriment impediment.²⁸ This situation is what is known as “raptus”, but should not be confused with “rape” in the ordinary acceptance of this word. The Law reads: “There can be no marriage between a woman and the man who has seized her for the purpose of marriage, as long as she remains in the power of her captor.”

Canon Law understands by this “raptus” or seizure, the holding of a woman by force in the place where she lives, as well as the carrying off of the woman to some place chosen by her captor. To constitute a diriment impediment the abduction or imprisonment must be against the will of the woman whom he wants to marry.

Obviously the Church instituted this diriment impediment in order to safeguard the free consent of the woman to the marriage contract. To say the least, Rome would frown on the “Rape of the Sabines” as a modern way to get wives.

8. *Complicity in Crime Against an Existent Marriage.* The Canon on this diriment impediment envisages three types of cooperation in crime against a marriage:²⁹

a) Those who during the one same marriage consummated adultery together, and promised to join together in marriage or even attempted marriage through a civil ceremony.

b) Those who during the one same marriage consummated adultery together, and one of them committed conjugicide.

c) Those who, without committing adultery, collaborated either physically or morally in bringing about the death of the spouse of one of them.

Little thought is required to grasp what the Church is trying to do in establishing these impediments. They aim at assuring fidelity to the marriage bond, and protecting the very lives of those who are joined together in marriage.

²⁸ *Id.*, canon 1074.

²⁹ *Id.*, canon 1075.

The Law setting forth this impediment arising from a common crime against marriage must be strictly interpreted. For example, the simple fact of adultery does not suffice for the two to incur the impediment. It must be formal adultery on the part of the man and the woman. That is, both of them must be aware of the actual existence of the marriage against which the crime is committed. Further, in the first type of this impediment, there must be the promise of marriage in conjunction with the adultery, and it must be manifested externally. The possibility of intricate complications in applying this law ought to be evident to any one trained in law.

9. *Close Relationship on Various Levels.* The Law of the Church lists five kinds of social ties involved in this impediment:³⁰ consanguinity or blood relatives; affinity; public propriety; spiritual paternity; legal paternity.

a) Consanguinity or blood relationship in the *direct* line, that is between parents and their children (illegitimate as well as legitimate), and their children's children prevents valid marriage between them at all levels. Consanguinity in the *collateral* line, that is, for example, between a man and his cousins bars marriage within the third degree of relationship inclusively.

The horror that peoples of all times have for incest indicates that this impediment is an evident dictate of right reason: "Cursed be he that lieth with his father's wife. . . . Cursed be he that lieth with his sister, the daughter of his father. . . ." (Deut. 27: 20, 22). It is motivated by eugenic and moral reasons.

b) Affinity is a relationship that originates through marriage and involves the husband with the blood relatives of his wife, and the wife with the blood relatives of her husband.³¹ The degree of affinity is computed in this way: what-

³⁰ *Id.*, canons 1076-80.

³¹ *Id.*, canon 97.

ever is the degree of consanguinity between the wife and her blood relatives establishes the same degree of affinity of the husband toward them. In the same way the wife has affinity toward the relatives of her husband.

Affinity stands as a diriment impediment to marriage for all degrees in the direct line (as, for example, the husband and his mother-in-law) and up to the second degree inclusive in the collateral line

c) Public propriety or decency affecting the possibility of marriage arises either from an invalid marriage (whether consummated or not), or from notorious concubinage (common law marriages). One or other of these situations bars valid marriage within the first and second degree of the direct line between the man and the blood relatives of the woman with whom he has been living as husband and wife, and between the woman and the blood relatives of the man with whom she has been living. A man, for example, cannot validly marry the daughter (through another man, of course) of his mistress.

d) Spiritual relationship takes its origin from the administration of the sacraments of baptism and confirmation. According to the present law of the Church a girl cannot marry either the one who administered baptism to her or the one who was her godparent in baptism. The sponsor in confirmation does not incur an impediment of this nature.

e) Legal relationship stems from adoption, and as an impediment to valid marriage involves the adopting parents and the one who is adopted as son or daughter. In this matter Canon Law conforms to civil laws to this effect: In those jurisdictions where the fact of adoption bars valid marriage by civil law, the Law of the Church goes along with it and bars valid marriage; where civil law forbids, but does not invalidate such a marriage, the Law of the Church does the same.

Conclusion

From all this we can readily see that the obstacles to a valid marriage in the Church are many, and, at times, complex. But one thing should be clear, namely, that the freedom from the obstacles legislated by the Church is demanded either by the very nature of marriage or by the essential needs of Christian life.

To impugn the integrity of the Church, because of an occasional abuse, perhaps, that has its source in these laws, is to lack understanding of basic facts. There is not the least inconsistency between the Church's firm stand on the indissolubility of marriage on the one hand, and the recognition of a number of conditions that nullify the presumed contract on the other. In general, the very conditions which either prevent or nullify a marriage contract, safeguard the sanctity and the strength of the genuine matrimonial union.

It is the right, it is the duty of every society to lay down strict laws for the validity of contracts, and marriage is no exception to this general rule. The Catholic Church prudently and wisely judges that in order to provide for the best interests of marriage certain conditions must be met by those who wish to enter this important state of life. If subsequent to the wedding legal experts discover an essential flaw in the matrimonial contract, nothing remains to be done but to declare the truth. The Church will issue an authoritative legal statement annulling the presumed contract.

It is open to any one, sinner or saint, poor or rich, to challenge the validity of his or her marriage, and to employ legal experts to examine the marriage for the discovery of possible legal flaws. The fact that a man undertakes this enquiry in order to rid himself of a wife whom he no longer loves, so as to be free to marry another woman of his choice, does not enter into the matter in the least. The court does not judge motives, but rather facts, and rights. A marriage is in

fact either valid or invalid regardless of the motive of the man who asks that his marriage be set aside as invalid. The records of cases adjudged by the Roman Tribunal, the Rota, are open for all to see.³² They give ample evidence that the Church shows no favoritism in its judicial decisions on marriage.

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³² In 1952 the Tribunal of the Rota rendered 185 decisions in which the petitioners sought declarations of nullity. Of these 185 decisions, 72, or 38% received such declarations; the rest were declared to be valid marriages. The grounds for those decisions granting decrees of nullity were for the most part based upon the defect of consent. On this head, force and fear were the principal motives alleged.

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The following is a breakdown of all cases for the year 1952 which were made public in 45 ACTA APOSTOLICA SEDIS 329-68 (1953), the official journal of the Tribunal of the Rota.

	<i>Number of Cases</i>	<i>Invalidity Proved</i>	<i>Invalidity Not Proved</i>
1) Plea of Defect of Consent:			
a) Force and fear	49	24	25
Force and fear joined to other reasons	14	5	9
Total	63	29	34
b) Exclusion of essential elements:			
— "bonum prolis" (good of the child)	37	13	24
— "bonum fidei" (good of faith)	2		2
— "bonum sacramenti" (good of the sacrament)	12	6	6
— "bonum prolis et fidei"	2		2
— "bonum prolis et sacramenti"	2	1	1
— "bonum fidei et sacramenti"	2		2
— "bonum prolis, fidei et sacramenti"	3	2	1
— "bonum fidei" et impot. viri	1		1
Total	61	22	39
c) Other defects in the Consent:			
— Failure to consent	2	1	1
— Complete simulation with the addition of other reaso	4	2	2
— Simulation of consent	3	1	2
— Simulation of consent with the addition of other reasons	5	2	3
— Insanity of the woman	3	2	1
— Ignorance of the nature of marriage	1		1
— Error concerning the person and condition not verified	1	1	
— Condition not verified	10	4	6
— Condition and disparity of worship	1		1
Total	30	13	17
Total on Plea of Defect of Consent	154	64	90
2) Plea of Invalidity Because of Impediment:			
a) Impotence of the man	18	4	14
b) Impotence of the woman	5		5
c) Existing marriage bond	1		1
d) Defect in the dispensation	1	1	
e) Invalidity of the dispensation	2	1	1
Total on plea of impediment	27	6	21
3) Plea of Defect of Form:			
a) Clandestine	1	1	
b) Defect in the form	3	1	2
Total on plea of defect of form	4	2	2
Grand Total	185	72	113