

Question: Who is Married?

The Church can and should make it possible for the faithful to know who has obtained an annulment.

By EDWARD PETERS

Catholics concerned about good governance in the Church breathed a sigh of relief when John Kerry lost his bid to become President of the United States. The ecclesiastical complications of a Kerry presidency would have been enormous. To state the issue simply, the junior senator from Massachusetts seems quite willing to take over from that state's senior senator the role of poster boy for prominent Catholics running afoul of Church law.

Kerry has been at odds with Catholic teaching on a number of points for some time. Recently he was accused of specific violations of penal canon law in a novel but highly publicized heresy denunciation. Still another persistent Kerry canonical controversy concerns the possibility that the annulment (or declaration of matrimonial nullity) that he is *believed* to have obtained for his first marriage to Julia Thorne might in fact never have been declared. If this is true, then his second marriage to Teresa Heinz is not recognized by the Church and on that score alone he (and Teresa, for that matter) would be ineligible to receive Communion (under the terms of canon 915) regardless of his potential culpability for any other canonical issues facing him.

I do not know whether John Kerry received a declaration of nullity for his first marriage. And *that* is precisely the problem. There seems to be a gap in the canon law of marriage and annulments, and Kerry, wittingly or not, has found it. Had Kerry been elected president,



(GREGORY SHEMITZ/LONG ISLAND CATHOLICS)

the question of his marital status would have demanded a clarification of a sort that is not easy to obtain now, and depending on what the answer was, it could have resulted in another mind-numbing scandal for the faithful.

There is, I think, a simple solution to the problem of public uncertainty over matrimonial status in the Church. What is required is to recall the values behind certain canons on marriage and annulment, and to bring canonical practice more fully into line with those values.

Public acts and public records

Marriage is a classic example of a *pub-*

lic institution. Both Church and state acknowledge this fact, and both require external, verifiable events to occur before granting any marriage legal recognition. The state, for example, requires licensing and the accurate recording of weddings in publicly accessible files. The Church, as part of the "canonical form for marriage," generally requires her members to marry before her own ministers, accompanied by at least two independent witnesses, with records to be preserved in various sacramental registers (see canons 1117, 1121).

These measures assuring the public verification of legal marriage (though

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perhaps these are redundant in the case of Catholics who have also complied with the requirements of canonical form) make great sense; civil and religious societies need to know who is married to whom—or to put it another way, which “significant relationships” deserve the special respect that is accorded marriage, and which ones do not. Under normal circumstances, the canonical and civil rules promoting marriage-awareness work; we pretty much know (or can easily find out) who is married.

A similar system for public verification of divorce is in place. The state, which recognizes divorce, requires public filing of divorce actions for them to be effective. Thus the basic fact of a divorce is not hard for third parties to establish. Even the Church, which does not accept civil divorce (at least not in so far as it purports to clear the path to subsequent marriage) respects certain civil consequences of divorce and acknowledges it in various contexts. Again, all of this is consistent with the needs for both civil and religious societies to know their members’ marital status.

But because a prior divorce is sufficient to make possible a second marriage, as far as the state is concerned, the state’s system of recording marriages

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and divorces is sufficient to serve its needs. The same cannot be said for the Church’s system of matrimonial record-keeping.

For the Church (prescinding from a few privileged cases and, obviously, the death of one’s prior spouse) only a declaration of nullity can make possible one’s “second” wedding in the Church. And precisely here is the problem: We know (or can easily and unobtrusively find

out) who is married, and we know (or can easily and unobtrusively find out) who is divorced. But we cannot tell with any objective certainty which divorced Catholics have obtained annulments, and which are still considered bound by their earlier attempt at marriage. In other words, in regard to a fundamental fact about two people—their marital status in the eyes of the Church—the faithful have no means of knowing with certainty what that status is, and consequently, how they should relate to the persons in question.

Ironically, not only does current canonical practice *not* tell us who has an annulment, but a strict reading of the canons on the presumptions favoring marriage requires the faithful to *presume the validity* of a first wedding (1060) and consequently, absent solid proof to the contrary, treat as questionable anything that looks like a second wedding (1069). But this presumption is manifestly unjust to the tens of thousands of Catholics who *have* obtained declarations of nullity and entered new marriages.

A need for change

So what is to be done? Some suggest that we need do nothing.

The very fact that a second Church



“... as you ought not to attempt to cure the eyes without the head, or the head without the eyes, so neither ought you to attempt to cure the body without the soul.”

—Plato
Charmides

“Studying the art of medicine without an understanding of human nature is much like building a house without blueprints.”

—Francis J. Milligan, M.D.
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wedding has occurred, these people argue, may be taken as proof that an annulment of the first was granted. Or, they might say, the uncertainty about marital status can be resolved by simply inquiring with the parties themselves. For several reasons, I think both these approaches fail.

One cannot rely on the mere fact of a second Church wedding in order to establish the annulment of an earlier marriage. Many people obtain annulments with no intention of entering a subsequent marriage, so there literally is no second wedding to observe. Moreover, if an individual who has obtained an annulment hopes for a subsequent Catholic marriage someday, it is obviously awkward, to say the least, to wait until plans for such a wedding are well underway before demonstrating one's canonical eligibility for marriage. Such eligibility should be demonstrated even before serious company-keeping begins.

Moreover, many canonically recognizable marriages are actually held before the individual(s) involved become Catholics; these marriages—which may be the second public marriages for one or both parties—are practically indistinguishable from other weddings that are *not* recognized by the Church. If canonists have to pore over such cases to determine the truth, how are rank and file faithful to know the difference?

Finally, and sadly, some clerics will scandalously permit subsequent weddings without a declaration of the nullity of an earlier marriage.

Nor can we rely on the word of the parties that they have obtained an annulment. Recall that in many situations, the parties' mere assertion is not regarded as sufficient to demonstrate their claim to be married or their claim to be divorced; the same concerns would apply to accepting the word of parties regarding their claim to have an annulment. More specifically, some people lie about having obtained annulments. I know I am not the only tribunal judge in America who has seen a fake annulment decree. True, such forgeries are easy for tribunal personnel to spot, but they are plausible enough on the surface to fool those who do not have canonical training.



(KARIN VON VOIGTLANDER/CATHOLIC COURIER/GNS)

Finally, the personal letter or “decree of nullity” that tribunals typically send to petitioners and respondents when nullity is declared—a document which could provide clear evidence of the annulment—is frequently *not* sent to parties for whom other canonical issues remain outstanding. If they are sent, they are sometimes simply lost, depriving such Catholics, and the wider faith community, of a reliable means of demonstrating marital status.

Public records

Many Catholics hang their wedding certificates or papal blessings on the wall; a few unhappy people frame their divorce decrees. But no one has ever hung a declaration of nullity over the fireplace. There has to be a better way of knowing who has obtained an annulment and who has not. And there is. Ecclesiastical declarations of matrimonial nullity, which are already recorded in diocesan tribunals, should be available for public verification as are the records of civil marriage and divorce. This simple approach would eliminate virtually all uncertainty or misinformation about an individual's basic marital status in the Church. And it would do so without compromising in the slightest anyone's right to privacy or good reputation.

When a civil wedding license is issued and the fact of the wedding later

recorded by both Church and state, there is no significant private information included in the files. The records, essentially, show only the names, ages, and residences or the marital partners, and the date and place of the wedding. One looks in vain to wedding records for spousal decisions on potentially controversial issues such as their desire to share checking accounts, the number of children they expect, or their favorite romantic songs. Virtually no one seriously objects to the recording of marriage in a publicly accessible file, and if they did object, the public's right to know something as important as one's marital status would prevail. Likewise, divorce decrees (with some exceptions made necessary in more complex cases) are usually simple statements that such-and-such a couple divorced in such-and-such a county on such-and-such a date. There is no confusion, uncertainty, or significant possibility of deception in such records. Again, the public's need to know such basic data is reasonably served.

Similarly, in proposing to give the public the opportunity to verify the records of annulments, there would be no question of disclosing the grounds for the annulments, the evidence used in reaching the decisions, or even which parties filed the cases. All that one could determine—but determine with accuracy and reliability—would be that a certain couple's attempt at marriage was declared, on a certain date in a certain tribunal, to have been ecclesiastically null.

Making possible the disclosure of such basic information (coordinated, perhaps, by the diocesan Promoter of Justice) serves the common good, is not prohibited by any canon now in force, and leaves intact the Church's ability to restrict disclosure in the rare problematic cases (see canons 1130, 1455, and 1614). In short order, the disturbing questions about matrimonial status, such as the one raised in Senator Kerry's case, would disappear. ■

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