

'Loose canon' on annulments may get tighter

John L. Allen Jr. | May. 1, 2012 NCR Today

ROME -- A Rome conference in late April hinted that the Vatican may be moving towards a more restrictive posture on annulments, the procedure in church law for declaring a marriage null and void, which some critics refer to as "Catholic divorce."

If so, the fallout could have special significance for the United States, home to just 6 percent of the world's Catholic population but accounting for roughly two-thirds of the 60,000 annulments issued by church courts each year.

The April 26-27 Rome conference focused on canon 1095 of the Code of Canon Law, which allows a marriage to be declared null if one of the parties lacked the ability to consent because of "causes of a psychic nature." Of the 15 to 20 possible grounds for an annulment in church law, more are granted on the basis of canon 1095 than all others combined, roughly two-thirds of the total.

As a result, some wags have dubbed canon 1095 the "loose canon."

Over the centuries, church courts typically interpreted the capacity to consent fairly narrowly "as long as someone was of age, not coerced and not clearly insane, they were presumed to be capable. Yet as divorce has become more common, there's often a powerful pastoral drive to find grounds for an annulment, given that a Catholic whose marriage breaks up can't get remarried in the church without one, and if they remarry under civil law, they're excluded from the sacraments.

Some critics argue that the pastoral desire to help people in difficulty has led to an overly elastic interpretation of canon 1095.

Sheila Rauch Kennedy, who successfully fought to overturn an annulment granted to her husband, then-U.S. Congressman Joseph Kennedy, in 1997, has written that church courts in America have adopted such an expansive reading of canon 1095 that it can now cover "almost anything ... from personality traits such as self-centeredness, moodiness or being eager to please, to unproven "disorders"."

If the conference sponsored by Rome's Opus Dei-run University of the Holy Cross is any indication, that loose canon may be about to become a little tighter.

Polish Bishop Antoni Stankiewicz, dean of the Roman Rota, the Vatican court that handles most marriage cases, told the conference that interpretation of canon 1095 must avoid an "anthropological pessimism" that would hold that "it's almost impossible to get married, in view of the current cultural situation."

"We must reaffirm the innate human capacity to marry," Stankiewicz told the group.

The session during which Stankiewicz spoke was presided over by American Cardinal Raymond Burke, who heads the Apostolic Signatura, the Vatican's equivalent of the Supreme Court.

Stankiewicz argued that Christian doctrine insists upon a "natural disposition to marriage" because the "gift of Christ is not exhausted in the celebration of the wedding. It extends to all of married life, supporting the spiritual growth of the spouses in the necessary virtues, duties and commitments of marriage."

His conclusion was that church courts should not be quick to presume an inability to give consent.

Stankiewicz warned against a "personalistic current" in legal theory, which would suggest there are "grades" in someone's capacity to consent. In reality, he suggested, capacity in the legal sense either exists or it doesn't. (For the same reason, Stankiewicz said he had opposed adding the word "grave" to the Code of Canon Law in regard to the concept of defect, saying, "It's always a problem when you introduce adjectives into the law.")

Citing Pope John Paul II, Stankiewicz said there's a distinction between the "minimal capacity" required by church law and the "full realization of human potential in terms of the intellect and the will."

Stankiewicz said expert witnesses in annulment procedures will often declare someone "incapable" of consent in that "more expansive" sense, when, he argued, that's not the legal standard. He described that trend as filling up "the minimum standard with the maximum content."

"We can't equate incapacity with a lack of moral virtue," he said. "Otherwise we would be saying that only saints can have valid marriages."

Fr. Juan Ignacio Bañares, an Opus Dei priest who teaches canon law at the University of Navarra in Spain, argued that in order to establish the sort of "grave defect of judgment" called for in canon 1095, it's not enough merely to show that someone's commitment to marriage was lukewarm.

The sort of "grave defect" that truly undercuts a capacity to consent, Bañares argued, "must regard the person as a whole," and therefore should produce effects "in other areas of life." In that sense, Bañares questioned the notion of a defect specific to marriage.

That's a point Stankiewicz seemed to echo, asking: "How can you be incapable of marriage, yet perfectly capable of doing everything else?"

At one stage, Stankiewicz took a question from the floor about whether it might be better simply to take canon 1095 off the books, or at least its third point about defects "of a psychic nature."

"I've heard important people who would be in favor of suppressing it," Stankiewicz said. Yet he argued that "suppression wouldn't resolve the problems," and that what's needed instead is "more precision on the meaning of 'capacity'."

While the tenor of those presentations would seem to point to tightening the standards for annulment, observers expressed a note of caution.

Pope John Paul II, both in 1987 and 1988, and Pope Benedict XVI in 2009, issued similar calls for a stricter interpretation of church law in their annual addresses to the Roman Curia, and so far most observers believe those injunctions have not significantly changed the practice of church courts.

To be sure, the number of annulments being granted each year in the United States is in decline. From peak of almost 64,000 in 1991, the number fell to 35,000 in 2007. Yet observers say that drop-off isn't so much because

courts in America became stricter, but rather because fewer Catholics are applying for an annulment.

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