

NOT ANNULMENT BUT DECLARATION OF NULLITY

Fr. Excelso Garcia, O.P.

In the article written by Loreto D. Dolor, entitled "*Divorce, Anyone?*", which appeared in the *Philippines Free Press* of March 25, 1972, page 8, an obvious inaccuracy has been committed in using the term annulment which, I believe, should be corrected in order not to mislead the readers. When applied to the Church's action, as in the statements attributed to *Fr. Gerald Healy* and *Sister Sonia Aldeguer*, the term *annulment* was used instead of *declaration of nullity*, since annulment is not granted by the ecclesiastical tribunal. This matter of divorce is so delicate and important that an accurate definition of terms is imperative in order to avoid confusion.

In the civil law, *annulment* is the action of a competent Court through which a marriage, considered valid by law, is rendered null and void because of a circumstance existing *at the time* of the celebration of marriage, due to which the law gives the Court power to nullify the marriage. *Declaration of nullity*, however, is an official pronouncement on the nullity of a union, which from its very beginning was null and void due to a circumstance existing *at that time*, which is considered by the law itself as a diriment impediment. In the Church no tribunal is empowered by law to pronounce a sentence of *annulment*. The ecclesiastical tribunal merely *declares* whether or not a concrete marriage is null and void from the beginning: *Constat* or *Non Constat de Nullitate in Casu*, is the consecrated wording of its decisions.

The implication from these definitions is obvious. Civil courts *do annul* marriages which are considered valid by law, as for instance *voidable marriages*. These marriages are valid before the law, subsisting until and unless they are set aside by a competent Court. The ecclesiastical tribunal, however, *does not annul* any valid marriage. It merely *declares* the marriage in question to be void and null from its celebration.

There is therefore no marriage to be annulled, because of its invalidity from the beginning.

Therefore, the statement attributed to Fr. Healy that: "The Pope is not against *annulments*. In fact, the Pope desires to have the procedure of *annulment* streamlined in order to facilitate the grant of *annulments* to those who deserve it",

is inaccurate. The Pope, being in favor of the indissolubility of any valid marriage, as he really is, is *obviously against its annulment*. The above quoted statement, therefore, is to be understood of marriages that *may be declared null and void* from the beginning due to the existence of a diriment impediment at the time of their celebration.

Likewise, the statement of Sister Sonia Aldeguer that: "The Church *annuls* the marriage because of vitiated consent,"

is also not correct for the reason explained above. Moreover, her other statement that:

"This cause for *annulment*, recognized by the Church, is not recognized by the Civil Code", is not accurate. The opposite is true. The Civil Code of the Philippines, in its Article 85, states:

"A marriage *may be annulled* for any of the following causes, existing at the time of the marriage... (5) That the consent of either party was obtained by *force or intimidation . . .*"

And Article 87 further states:

"The Action for *annulments* of marriage must be commenced by the parties and within the periods as follows: . . . (5) For causes mentioned in number 5, by the injured party, within four years from the time the *force or intimidation ceased*."

True that *force and intimidation* have a broader meaning in the Church law than in the State law. However, those marriages entered into with a vitiated consent due to *force and intimidation* as understood by both laws, are *annulled* by the civil courts but *may not be annulled* by the ecclesiastical tribunal. The latter merely *declares that those marriages in question were never valid* for lack of sufficient consent.

Finally, the statement attributed to Fr. Healy that: "Regarding civil marriages, he would not object to a civil divorce, as he would leave that to the complete control of the government",

is against the stand of the Catholic Hierarchy. It is true that the author of the article where these statements appeared says that Fr. Healy made clear that "his views were his own and did not necessarily reflect the official stand of the Philippine Catholic Church on divorce issue".

I presume that the official stand of the Philippine Catholic Church is in perfect agreement with the official stand of the Church's magisterium, as represented by the Pope, Head of the Universal Church, who is the one endowed with the very special Divine assistance when teaching matters of faith and morals, as in the case of divorce. The Church's official stand on this matters, as reflected in the papal pronouncements, is opposed to the one attributed to Fr. Healy, to wit:

"Marriage even in the state of nature . . . should carry with it a perpetual and indissoluble bond which cannot therefore be dissolved *by any civil law*" (Pius VI).

"The restoration of indissolubility refers to every kind of marriage, even that which is natural and legitimate only; for that indissolubility by which the loosening of the bond is once and for all removed from the whim of the parties and *from every secular power*, is a property of every true marriage" (Pius XI, *Encycl. On Christian Marriage*, n. 87).

"Opposed to all these reckless opinions (*in favor of divorce*) stands the unalterable law of God, fully confirmed by Christ, a law that can never be deprived of its force *by the decrees of man, the ideas of a people or the will of a legislator*: 'What God hath joined together, let no man put asunder'. And *if any man, acting contrary to this law, shall have put asunder, his action is null and void*" (Ibid.).

"Even where the parties are not baptized, marriage legitimately contracted is a sacred thing in the natural order. *The civil courts have no power to dissolve it, and the Church has never recognized the validity of divorce decrees in such cases*" (Pius XII, 1946, *Papal Pronouncements* by A. Werth, p. 55).