

Contraception and Divorce:

Insights from American Annulment Cases

— by Edward Peters, J.D., J.C.D. —

Editor's Note: The following article is presented as documentation. It is the important witness of a canon lawyer to the benefits of NFP on marriage. From his perspective on the marriage tribunal of a major U.S. diocese, Dr. Peters has seen a great number of failed marriages. As a concerned Catholic he has come to realize that NFP is a practice rarely found among those petitioning the Church courts for declaration of nullity. It is evidence by omission, sort of like Dr. Pasteur noticing that none of the local milk maids were catching small pox. Perhaps you may want to share this article with a priest you know who is looking for pastoral approaches that can reduce the likelihood of divorce among those he is preparing for marriage.

Canon law requires ecclesiastical judges to determine whether there is any reasonable prospect of reconciling estranged couples before hearing their annulment cases. Therefore, petitions for declarations of matrimonial nullity are rarely accepted by diocesan tribunals unless the civil divorce of the parties is final. Thus, regardless of whether the annulment is later granted, the divorce itself, and the myriad of sufferings consequent to divorce, is certain. Now, even if one accepts, as I do, that the great majority of annulment cases in America are being decided correctly (albeit sometimes ineptly), there is little good news contained within the soaring annulment statistics which are in turn based partly on soaring divorce rates.

However, even those who dispute the results reached in American annulment cases or the analytical methods used to reach those results cannot dispute the facts which are presented for adjudication in annulment cases. Facts are facts, and the facts in post-divorce annulment cases — concerning things like family history, the conduct of parties before marriage, and the chronology of marriage collapse — are reliably ascertained by tribunal judges before being interpreted in light of canon law. But if the facts being presented in annulment cases portend little good news for society, they might still contain some *important* news, important, at least, to those who wish to take a more

proactive stand against the disintegration of marriage and family life.

Every tribunal judge knows the high frequency of annulment cases with histories inclusive of such things as parental divorce, drug and alcohol abuse, sexual abuse, premarital promiscuity, abortion, and so on, and sociologists can demonstrate the huge increases in such factors today over, say, the typical young adult of 1965. But while it is the province of canon law to assess carefully the degree to which such factors might constitute obstacles to marriage or otherwise negatively impact one's consent to marriage in particular cases, surely it is a pastoral imperative to recognize and respond to the prevalence of such deleterious factors among people attempting marriage today, that is, people similar to those whose marriages we *know* have ended in divorce, again, regardless of whether those failed marriages are ever declared canonically null.

In this essay, I wish simply to highlight another factor which tribunals commonly see among divorced persons, even if some tribunal judges might not have yet noticed just how often they encounter it. That factor is contraception. The antithesis which contraception poses to marriage is so serious *and so common* that responding to it vigorously should be among our highest pastoral priorities. As a first step, though, one needs to recognize the prevalence of contraception among failed marriages.

According to various studies, the lowest reasonable estimate of contraceptive use among Americans seems to be around 85%, with Catholics being statistically indistinguishable from the population at large. But among those *divorced* persons, Catholic or otherwise, coming before a diocesan tribunal as part of an annulment case, my estimate is that some form of contraception was used during all or a significant part of the failed marriage (commonly, well before the wedding) in 99% of the cases. Granted, many of the annulment petitions I see, because they turn on issues unrelated to matters linked to contraception, might be vague on the contraceptive aspect of the relationship, and so I infer its use from other things in the case. But I am reasonably confident that a contraception-specific inquiry into

typical annulment cases would yield a result at or very close to the figure asserted above.

One can and should, of course, question whether the high correlation between contraception and divorce proposed above, even if proven scientifically, is significant. After all, I imagine 99% of divorced people have driver's licenses, or eat meat twice a week, or were born within three weeks of their due date, and so on; yet none of these factors would seem to be related in any way to their eventual divorce, to say nothing of the possible canonical nullity of their marriage. On the other hand, none of these other factors has been the subject of a clear and constant Church warning about the destructive nature of such activities to individual holiness and happiness in marriage. Contraception, obviously, *has* been the subject of such warnings numerous times and now, it seems, there might be

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some numerical support for establishing a link between it and marriage failure.

To be sure, moreover, there are a host of other factors which, if present between a couple, could well contribute to their eventual divorce and which, if proven, would be relevant in any subsequent annulment case — factors such as pre-wedding suicide attempts, abortions, drug abuse, and so on. But, these factors, however destructive they are in individual cases, are much less common among the divorced than is contraception. In my experience, no single factor as directly and as gravely injurious to marriage (as taught by the Church) occurs nearly as frequently in the histories of those who eventually divorce as does contraception. This applies whether the case involves non-Catholics, who could hardly be expected to know of the Church's teaching against contraception, or Catholics, toward whom there have been precious few concerted efforts to promote and defend the Church's teaching on this matter for ever 30 years. Ignorance, not ill-will, may be the deadly, but eminently remediable, evil at work here.

I can, in any event, support my assertion of a significant contraception-divorce link from yet another angle. After a decade of working on annulment cases, I

— see *ANNULMENTS*, page 29

have studied some 1,500 marriage and divorce histories, probably more. Yet, I can recall only one, *maybe* two, cases where Natural Family Planning, as opposed to some form of contraception, was seriously tried by the parties prior to their divorce, and at most one or two other cases where it was even considered. This kind of figure, of which I am very confident, should be read in light of informal reports by the Couple to Couple League and others which amply demonstrate that regular practitioners of NFP have remarkably, some might say astoundingly, low divorce rates. If a correlation between contraceptive use and eventual divorce is not beginning to emerge here, I don't know where it would.

Of course, proponents of NFP cannot claim that avoiding contraception, by itself, prevents divorce, nor can I conclude that using contraception, standing alone, results in divorce — let alone in the canonical nullity of the failed marriage. But neither can I prove that every child who plays in discarded refrigerators is trapped or killed, or that every child who avoids old refrigerators grows up healthy and happy. That does not excuse us from doing all in our power to keep children away from such practices.

Personally, I do not think the decision to use contraception *causes* the decision to divorce. Rather, I think the choice to contracept is the fruit of the same mentality which so often eventually prompts the decision to divorce, especially when contraceptive use predates the wedding. The fundamental self-centeredness (whether morally imputable to the individual or not) of contraception, the grave ignorance about the ends of natural, to say nothing of Christian, marriage which it betrays, the specific attitudes toward children which it evidences — all of these factors are consistent with a predisposition for divorce. Moreover, each of these factors in turn raises real questions about the quality of consent to marriage which was purportedly exchanged between the couple who later divorced, which is what I believe makes contraception relevant to, though not dispositive of, annulment cases.

But if contraception and divorce are stems from the same root, as it were, contraception (or the willingness to contracept) necessarily appears before the divorce, and very often it is manifest before the wedding. That simple fact should provide a basis for proactive intervention on the part of pastoral advisors or personal counselors. The presence of contraception or contraceptive intent could serve as a warning that a given marriage is in trouble, perhaps even before the couple themselves are aware of it, and it could certainly provide a basis for putting the brakes on the plans of yet another couple to enter marriage with obvious contraceptive plans, regardless of whether such intentions would be sufficient, standing

alone, to declare the canonical nullity of the marriage. In brief, if my assertions concerning the link between contraception and divorce are verified — and such research, given the controversial nature of the topic, would have to be *reliably* conducted before being accepted — would it not be a grave pastoral disservice to avoid discussing the destructive nature of contraception in a deliberate way with those already in or preparing for marriage and, even better, with those not yet committed to a wedding?

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By way of conclusion, permit this personal aside: Although I was mercifully spared the “rejection of religion” phase which so many of my peers suffered in the 1970s, I certainly passed through a period of indifference toward the Faith and enjoyed the kind of mild contempt toward its “relevance” which omniscient adolescence bestows on most things older than itself.

In college, however, I was exposed to students and professors who treated the Catholic Church as a serious institution meant to make a real difference in people's lives. Step by step, I felt myself being compelled to recognize the wisdom of Catholicism, until I confronted the issue of contraception. I knew little about it then and had no vested interest in the debate either way; but surely, I felt, the Church was out-manned and out-gunned on this one.

Eventually, after real study and real prayer, and most of all after God's graces, the *Humanae Vitae* light bulb finally came on inside. I can still recall laying the text down and saying aloud to myself, “My God, if the Church is right about contraception, it could be right about anything.” Since that day I have been repeatedly struck by the depth of truth which supports the Church's teaching against contraception and the importance of that teaching for healthy marriage and society. Certainly nothing in tribunal work has ever caused me to doubt this point.

So, the Church, and a few other voices, are right about the bane of contraception.

They are right about the beauty and soundness of Natural Family Planning. The “negative confirmation” of the Church's teaching against contraception which I think can be verified by the experience of diocesan tribunals with divorced persons might not qualify as the silver lining to the annulment cloud, but it might provide some much needed rainfall on an earth parched for the truth below. Divorce rates among practitioners of NFP are demonstrably tiny. The frequency of contraceptive use among those divorcing is markedly elevated. One is not guilty of a *post hoc, ergo propter hoc* fallacy in concluding that serious NFP instruction should be required in every marriage preparation program. One is simply playing the odds. ♦

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— BLESSING, from page 32 —

in the method, no trust in us, and afraid of taking a seat in the classroom. By the fourth class they realize that their doubts were temporary, that the trust in the method doesn't come from us but from God and themselves. We enjoy seeing how couples arrive with an erroneous mentality from society (i.e., believing artificial methods are easier, breastfeeding only during maternity leave, distrust of abstinence during marriage, etc.) and then appreciate their change of mind as we get through all four classes. We are very proud of being part of CCL for all these reasons, but especially because we've learned the STM is not only a way of spacing children, but a lifestyle that shows us how to be better parents, couples, families, and Christians.

Now, on our seventh wedding anniversary, we consider our involvement with CCL a gratifying experience and a great blessing to our marriage. We hope this inspires other couples who also believe it is the best alternative that exists for family planning to consider the idea of becoming teachers. We are convinced you would experience God's blessings!

— Mario and Elba Fonseca are CCL TC #1167. They live in Rio Piedras, Puerto Rico.

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