by Christopher A. Ferrara

In the rescript Pope Francis has issued "regarding the implementation of the recent reforms to the Church's marriage law," there is a provision whose immense significance has not been lost on canon law experts. Here it is:

> "No recourse is allowed before the Roman Rota for a *Nova Causae Propositio* (N.C.P.), after one of the parties has contracted a new canonical marriage, unless the injustice of the decision is manifestly established."

What this means in simple terms is that if one party to marriage obtains a quickie annulment at the diocesan level, the party opposing the annulment cannot even introduce a new cause or grounds for contesting the annulment in the Roman Rota, to which decrees of nullity from the dioceses are appealed, if the other party has rushed into a new Church wedding.

In essence, a new Church wedding while the matrimonial proceedings are still pending effectively ends the proceedings by establishing the finality of the diocesan annulment *merely by the actions of the other party* — rather than through exhaustion of the annulment process itself, which is supposed to be based on the search for the objective truth about a marriage whose validity has always been presumed under Church law.

In an article entitled "It's Liftoff for the New Procedures for 'Failed' Marriages. But Such Confusion," Sandro Magister presents an Italian language commentary by a respected canonist, Guido Ferro Canale. Canale warns that the net effect is to leave the party contesting the annulment of his or her marriage based on some newly discovered grounds — e.g., that the other party lied or presented fabricated evidence during the diocesan proceedings — effectively in the position of someone challenging an *already final* judgment under Church law, even if Francis' rescript does not say so explicitly.

Under canon law, a final judgment cannot be attacked unless it is first clearly established that the judgment was "manifestly unjust." The standard for such a "collateral attack" — here involving a diocesan declaration of nullity — would have to be governed, Canale argues, by Canon 1645, which imposes daunting requirements for setting aside an already final canonical judgment.

Never, says Canale (following translations are mine) has such a presumption of finality "been tied to an extrinsic and supervening event" — meaning a new Church wedding —

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"which is precisely what the new marriage is." Further, he notes, one could even say that this new rule "determines the cessation of interest in the truth about the first bond, because it is evident that, if it is valid, the new nuptials are void."

The implications are devastating. For example, a cheating husband married for many years could abandon his wife and children, obtain an annulment and then immediately have a Church wedding with the new partner of his choice — in the same diocese that granted the annulment! He would thus effectively bring to a halt the wife's effort to defend the marriage bond on appeal to the Rota. She would have been given the classic bum's rush out of the marriage, along with the children.

This outcome, Canale observes, "is equivalent to saying that the new union is entirely meritorious in itself, without even a reference to the good faith of the contracting parties. To the point of precluding the ascertainment of the truth concerning the preceding union." As he concludes: "It has never been licit to take an action where there is doubt about whether it is sinful; otherwise, to accept the risk is equivalent to committing the sin itself" — in this case, the sin of adultery.

In his rescript Francis declares that his "reforms" of the Church's marriage laws are aimed at "the multitude of those who live the drama of *marital failure*…" Marital failure? But a decree of annulment is supposed to mean only that there *never was*a marriage and thus *no marriage to "fail."* Indeed, because a sacramental marriage is indissoluble and the parties to it are unalterably configured to Christ in Holy Matrimony, to speak of "marital failure" at all — much less a *multitude* of "marital failures" — is to suggest precisely what critics of these reforms fear: the advent of "Catholic divorce."

No wonder Sister Lucia warned Cardinal Caffarra that "the final battle between the Lord and the reign of Satan will be about marriage and the family." It appears that the final battle is well underway.

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