

Despite the Church claim to exclusive right over the marriage cases of the baptized, it does, however, recognize the competence of secular authorities to regulate the marriages of the non-baptized in the interest of the common good and to judge whether their marriages were valid or not, as long as the basis for a civil declaration of nullity was a matter of natural law or, if it was a matter of positive human law, e.g., *dolus* or fraud,⁶ was at least not contrary to natural law. To make this determination when a non-baptized recipient of a civil annulment wishes to marry a Catholic, the tribunal should follow a process analogous to the one prescribed by the Council for Legislative Texts for cases involving annulments of Eastern non-Catholic churches.

§2. *Cases regarding merely the civil effects of marriage belong to a civil magistrate, unless the particular law establishes that such cases, if carried out in an incidental or accessory manner, can be recognized by and determined by an ecclesiastical judge.*

This canon renders verbatim the text of canon 1672 of the promulgated 1983 code and article 3 §3 of the instruction *Dignitas connubii*. Although the Church reserves to itself the sole right to judge the validity of the

5. See Navarrete, 122–123.

6. See Note, "Annulments for Fraud—New York's Answer to Reno?" *Columbia Law Review* 48 (1948) 900–920.

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marriages of the baptized, it recognizes the authority of secular courts to deal with the merely civil effects of marital break down.⁷ These civil effects include such matters as the distribution of property, child support, spousal support or alimony, custody of minor children, and child support and visitation. The mention of "particular law" (*ius particulare*) in the final clause of the canon is a reference to the fact that, in virtue of concordats or treaties between the Holy See and some nations, ecclesiastical tribunals may be empowered not only to judge the question of the validity of marriages but also to decide the civil issues that are accessory to the issue of marital nullity. Nations which recognize the civil effects of decisions of ecclesiastical tribunals include Columbia, Spain and Italy. In such cases, the secular law usually has some technical mechanism by which the state adopts or "makes its own" the decisions ecclesiastical courts.⁸ In Italy, for example, decisions of ecclesiastical tribunals (including those outside Italy) must be certified as authentic by the Apostolic Signatura before they are given civil effects by the Italian courts. In other countries like Lebanon and other near Eastern countries, secular authorities simply defer to religious authorities in marital matters. Thus, the decisions of Church tribunals there have civil effects automatically.⁹ Where ecclesiastical courts have the authority to determine the civil effects of declarations of nullity or decrees of separation, they treat the questions of nullity or separation as the principal issue and the question of civil effects as an incidental or accessory cases. (cc. 1587–1591)