

Canonical questions about the Schiavo-Centonze marriage

by Edward N. Peters

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On March 31, 2005, thirteen days after being deprived of all nutrition and hydration, Terri Schiavo died. Her husband Michael, who ignored numerous appeals on behalf of Terri and rejected offers from others to take over her care, had finally outmaneuvered Terri's parents, the Florida legislature, and even the US Congress, in his bid to cut off his disabled wife's food and water with impunity. Terri's final agony—and death by dehydration-starvation is agonizing—dramatically coincided with Pope John Paul II's last days on earth. Even the Vatican issued an extraordinarily direct plea for the young woman's life, to no avail.

Terri's death had several consequences *vis-à-vis* Michael. For example, it gave him the rights to a trust fund established for Terri's long-term care (although Michael had apparently already spent much of the original \$ 750,000 on lawyers). It eliminated any lingering possibilities that Terri herself could someday communicate what happened to her that night in 1990 when Michael says he found his wife on the floor of their home. Finally, Terri's death cleared the way for Michael to marry Jodi Centonze, a divorcée with whom Michael had been living for several years and by whom he had fathered two children.

Or did it?

The Catholic Church, "an expert in humanity" as Pope Paul VI once observed, knows that some

people, perhaps in ironic acknowledgment of Church teaching that marriage lasts until death, will try to kill one spouse in order to take another. But since at least the 13th century, such deadly stratagems have been countered by a canonical impediment against the second marriage. Today, the matrimonial impediment of *crimen* is found in Canon 1090 of the *Code of Canon Law*, the first paragraph of which reads as follows: "Anyone who, with a view to entering marriage with a certain person, has brought about the death of that person's spouse or of one's own spouse invalidly attempts this marriage." It is on the basis of *crimen* that the Schiavo-Centonze marriage, held on January 21, 2006 to the scandal of many, seems open to serious question. This article examines the possible canonical objections to the Schiavo-Centonze marriage.

To be sure, no Christian marriage should lightly be impugned. According to canon law, all marriages enjoy "the favor of law" (c. 1060), meaning that the burden of proof rests upon those who would challenge the validity of a given marriage (cc. 1526, 1608). Catholic weddings, moreover, are to take place only after the pastor verifies "that nothing stands in the way of [a] valid and licit celebration" (cc. 1066, 1070); consequently, any Catholic wedding conducted in accord with canonical form—as the Schiavo-Centonze wedding seems to have been—enjoys the presumption of validity. But that presumption is not absolute; it yields to contrary evidence. If it could be proven that the Schiavo-Centonze marriage is, despite its public celebration, canonically null, the parties to that union would have the right to know how that fact impacts on their status in the Church. For that matter, the wider faith community has a right to know which persons it should regard as married and which ones ought not to enjoy that recognition.

The vast majority of challenges to matrimonial validity (commonly known as annulment cases) are filed by the parties to a marriage, but the right to challenge a marriage is not limited to the couple

themselves. The Church, having established a diocesan officer known as the Promoter of Justice (cc. 1430, 1435), authorizes this trained professional to challenge any marriage when its nullity is, or could be upon investigation, provable in the external forum (c. 1674). In fact, the Promoter of Justice must act in cases concerning the common good and, under canon law, it is well recognized that matrimonial cases, by their very nature, involve the common good. The jurisdictional requirements to adjudicate the canonical status of the Schiavo-Centonze marriage are clearly satisfied by the diocese of St. Petersburg because the wedding took place within its boundaries (c. 1673).

Nevertheless, some factors in the Schiavo case might cause some to wonder whether he has incurred the canonical impediment of *crimen*.

First, some might think that Michael's status as a baptized non-Catholic exempts him from canonical impediments. It is true that non-baptized persons and baptized non-Catholics who marry among themselves are not bound by impediments of purely ecclesiastical law, among which impediments *crimen* is generally classed. But when non-Catholics marry Catholics, canon law applies to both parties (c. 1059). In attempting marriage with a baptized Catholic, Jodi Centonze, Michael made himself subject to the requirements of ecclesiastical law, including the Church's laws on matrimonial impediments. Moreover, ignorance of an impediment is no bar to incurring it (c. 15); even marriages celebrated "in good faith", but under an impediment, are null (cc. 1057, 1073).

Second, some might wonder whether Michael avoids the impediment of *crimen* because his role in Terri's death was indirect. He did not personally cut off his wife's nutrition and hydration; instead, medical personnel acting on his directions and with court authorization did so. But canonical commentators are unanimous that the impediment of *crimen* applies not only to one who directly kills a spouse, but also to the *mandans* behind a spouse's death. One who achieves a spouse's death through intermediaries (e.g., by using hired killers, inciting enemy soldiers during war, or even leading one's spouse to commit suicide) is liable for any canonical consequences arising from that death. Michael, having secured a civil judge's de-

creed in support of actions that were intended to lead to his wife's death, directed medical personnel to deprive Terri of nutrition and hydration until she died. Such conduct, I suggest, qualifies Michael Schiavo as the *mandans* behind his wife's death.

Third, some might think that Michael avoids the impediment of *crimen* because a civil court approved his petition to deprive Terri of nutrition and hydration. The question may be posed thus: If, as far as the state was concerned, Michael committed no crime, can he still be "guilty" of *crimen* under canon law? The answer is Yes. Just as the Church can impose canonical consequences on persons involved in abortion (cc. 1041, 1398) even though abortion is civilly legal, so too the Church can impose canonical consequences on those who commit homicide (cc. 1041, 1090, 1397), even if such killings are not punishable under civil law. This point deserves some elaboration.

While the canonical term *crimen* resembles the English term "crime", canon law does not require that a spousal homicide be recognized as a "criminal" act under civil law in order for the impediment of *crimen* to arise. The impediment of *crimen* can be incurred even if no civil "crime" was committed. The only canonical question is whether the death of one spouse was brought about by the other with the intention of making possible a marriage to a third party. Of course, as the legalization of euthanasia spreads, deaths like the one imposed on Terri Schiavo can and will be procured more frequently under circumstances that are morally and canonically objectionable, but civilly legal. Increasingly, then, persons with a matrimonial motive to eliminate a vulnerable spouse could find an opportunity to do so under civil laws authorizing euthanasia, and at least some of those people will later present themselves for Catholic marriage. The time to confront this aspect of euthanasia has clearly arrived.

Of course, one must not attempt an interpretation of *crimen* that transgresses its terms (cc. 18, 213, 843, 1058). For example, the *crimen* impediment is designed to deter only homicides committed in furtherance of plans to marry another. Therefore, accidental spousal killings are not *crimen* cases, and even deliberate spousal homicides motivated by, say, hatred, desire for profit, or a general wish to be free of the obligations of married life, do not constitute

crimen, although they might well be punishable under civil manslaughter or murder laws. The ecclesiastical consequences of *crimen* arise only if the killing of a spouse was committed with the intention of clearing the other's way to marriage with a specific party. To be sure, some spousal killings might be committed with multiple motives (e.g., insurance money and a new spouse). As long as any of those motives is the furtherance of a plan to marry another, the impediment of *crimen* should apply.

There are, of course, hard cases on the horizon. In Terri Schiavo's case, it will be recalled, nutrition and fluids constituted "ordinary care". Their removal was directly intended to, and did, bring about her death. But what about cases where spousal death follows the refusal or cessation of *extraordinary* care? Assuming full compliance with the Church's criteria for care in close cases, could the canonical impediment of *crimen* be incurred if the decision-making spouse, desirous of entering marriage with someone else and motivated by that bias, declines to approve *extraordinary* care for a stricken spouse? I think not.

Committing a sin and incurring an impediment are related but indisputably distinct things. Moral theology informs the conscience while the reach of the law is generally restricted to observable facts and external behaviors. Declining *extraordinary* care for the satisfaction of seeing a stricken spouse die is morally blameworthy but, at least under the circumstances of this hypothetical, it seems that death would result not from the decision on *extraordinary* care, but rather from underlying pathologies or injuries that one was not morally obligated to treat with *extraordinary* means in the first place. Thus, it seems to me, the lack of a *causal* link between one spouse's conduct and the other spouse's death prevents the impediment of *crimen* from being incurred. I admit that my conclusion here is tentative, and I offer it for more study; at a minimum, as I suggested above, these kinds of questions are only going to become more

common as civil protections for innocent life continue to crumble. In any case, canonical investigation of the Schiavo-Centonze marriage need not await resolution of the more difficult "extraordinary care" questions because, as noted above, Michael deprived his wife Terri of *ordinary* care.

Finally, it should be recalled that the canonical consequences of the *crimen* impediment do not simply "fade away" with time. Indeed, personal repentance of a spousal killing or even obtaining sacramental absolution for any sin related to it would not cancel the canonical impediment. To the contrary, the Holy See has greatly restricted authority to dispense from the impediment of *crimen* (cc. 90, 1078, 1080) and commentators agree that, especially where the fact of spousal responsibility for the killing is widely known, dispensations from *crimen* are so rare as to be non-existent.

In brief, the diocese of St. Petersburg has jurisdiction over the Schiavo-Centonze wedding, there are credible grounds to question its validity under canon law and cogent replies to objections against such a challenge, and hearing this case would not require resolution of moral questions complicated by *extraordinary* care considerations.

The canonical impediment of *crimen* does more than serve as a disincentive to persons seeking to eliminate current spouses in order to marry new ones; it serves notice that consequences for lethal wrongs committed against innocent parties can remain even if others have forgotten the deceased, and specifically asserts that the approbation of a Church wedding will not be extended to those who, in pursuit of that wedding, are responsible for a former spouse's death. But for Canon 1090 to have its salutary effect in the Church and in society, plausible cases of canonical *crimen* must be carefully investigated and accurately decided, and the results appropriately published.