

*The Extraordinary Form of Marriage  
According to Canon 1098*

Nihil Obstat:

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Censor Deputatus.

Washington, die XXII Maii, 1954.

Imprimatur:

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Archiepiscopus—Episcopus Brooklynensis.

Brooklyn, die XXV Maii, 1954.

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THE CATHOLIC UNIVERSITY OF AMERICA PRESS, INC.

Printed by  
THE PAULIST PRESS  
401 WEST 59TH STREET  
NEW YORK 19, N. Y.  
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## FOREWORD

Ever solicitous for the eternal happiness as well as for the temporal welfare of the souls committed to its care by its Divine Founder, the Church has always given marriage and the marriage contract its special care and attention. Realizing that fallen human nature is not averse to regarding matrimony as a mere human institution, dissoluble at will, and further, realizing also the many heartaches that are a result of broken marriages and new alliances, the Church has, in order the better to establish the fact of marriage, prescribed certain formalities which are to be observed in the contracting of marriage.

The Church is fully aware of being the custodian of the sacraments and the official interpreter of God's laws. Legislating for the sacrament of matrimony, the Church has always taken care not to encroach on the natural right of marrying that each man has. What is more, the Church has always championed that right. Inasmuch as these formalities will at times be impossible of observance, one is led to believe, and rightly so, that some provision must have been made for such eventualities. It will be, then, the purpose of this dissertation to investigate the canonical institute known as the "extraordinary juridical form of marriage."

The treatise is divided into two parts: the first will deal with a historical synopsis of the development of the extraordinary form of marriage, and the second will be devoted to a canonical commentary on this institute.

The writer wishes to take this opportunity to express his heartfelt gratitude to His Excellency, the Most Reverend Thomas E. Molloy, S.T.D., Archbishop-Bishop of Brooklyn, for the special privilege of being allowed to pursue post-graduate studies in Canon Law and for his kind generosity in making this publication possible. The writer wishes also to express his sincere appreciation to His Excellency, the Most Reverend Raymond A. Kearney, S.T.D., J.C.D., Auxiliary Bishop and Chancellor of the Diocese of Brooklyn, for his kindness in suggesting the topic for this dissertation and for his continued interest in it and for his helpful encouragement. He is deeply indebted indeed to the members of the Faculty of the School of Canon Law for their helpful suggestions and their scholarly direction and assistance in the preparation of this dissertation.

## INTRODUCTION

ANY appreciably complete effort to trace the history of what canonical commentaries have termed the "extraordinary form of marriage," or the juridic form of marriage in "extraordinary cases," as appertaining to the form of marriage described in canon 1098 of the Code of Canon Law,<sup>1</sup> must of necessity delineate the historical development of the Church's doctrine as to what is essential in the formation of the marriage contract and simultaneously in the reception of the sacrament of matrimony, for among the baptized one cannot exist without the other.<sup>2</sup> That the Church has this right to declare what is required can be gleaned from the fact that it is the custodian of the sacraments and the official interpreter of God's law. Logically, one must first show what has been and what is now considered the *ordinary form* of marriage before one may satisfactorily describe the development of the *extraordinary form* of marriage.

It seems mandatory at the very outset to note in exactly what sense the term *form* is to be understood. It is not to be taken in the philosophical sense as specifying a thing in its species, e.g., in marriage, an association of man and woman as husband and wife, and not an association of any other type; nor, in the theological sense of *form*, as in the sacrament of matrimony, i.e., the mutual acceptance of the two parties in words or signs of each one's rights over the other's body for the performance of acts which of themselves are suited for the begetting of children, which rights are being given at the time of their acceptance.<sup>3</sup>

<sup>1</sup> *Codex Iuris Canonici Pii X Pontificis Maximi jussu digestus Benedicti XV auctoritate promulgatus, Praefatione, Pontium Annotatione et Indice Analytico-Alphabetico ab Eñño Petro Card. Gasparri Auctus* (Romae: Typis Polyglottis Vaticanis, 1917; Reimpresso, 1934).

<sup>2</sup> Canon 1012.

<sup>3</sup> P. Gasparri, *Tractatus Canonicus de Matrimonio*, editio nova ad mentem Codicis Iuris Canonici (2 vols., Romae: Typis Polyglottis Vaticanae, 1932), I, n. 34 (hereafter cited Gasparri); Cappello, *Tractatus Canonico-Moralis de Sacramentis* (5 vols., Vol. I, *De sacramentis in genere*, 5. ed.; Vol. V, *De Matrimonio*, 5. ed., Romae: Marietti: 1947), V (*De Matrimonio*), n. 30 (hereafter