

# Marriage Annulment

in the Catholic Church



by Stephen Gasche



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Stephen Gasche

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## CONTENTS

The Teaching of the Catholic Church on Marriage .....	3
The Causes of Marriage Nullity.....	8
(i) Existence of an Impediment .....	8
(ii) Defect of Consent .....	10
(iii) Defect of Form.....	14
Dissolution of a Valid Marriage .....	16
How the Marriage Annulment Procedure Works .....	18
Further Reading .....	21
Notes .....	23

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## THE TEACHING OF THE CATHOLIC CHURCH ON MARRIAGE

People often ask what nullity of marriage is all about. Sometimes it is thought of as a Catholic form of divorce. It is also believed by some to be obtainable only by those who are wealthy or influential. Neither of these assertions is true: every person, whether a Catholic or not, has the right to petition for a declaration of nullity of his or her marriage. Such a declaration is quite distinct from a civil divorce; it is rather a declaration by the Catholic Church that a particular union was not a valid marriage. While all who are able to do so are asked to contribute towards the cost of this nullity process, those who are unable to afford it do not have to pay anything at all.<sup>1</sup>

Before discussing what is involved in the marriage nullity process, it is important to understand something of the teaching of the Catholic Church on marriage. For this there is no better starting point than the *Catechism of the Catholic Church*, which offers a succinct description of marriage founded on the teaching of Christ in the Gospels and on the doctrine of the Church: “The matrimonial

covenant, by which a man and a woman establish between themselves a partnership of the whole of life, is by its nature ordered toward the good of the spouses and the procreation and education of offspring; this covenant between baptised persons has been raised by Christ the Lord to the dignity of a sacrament.”<sup>2</sup>

The Catechism then goes on to express the indissolubility of a valid, sacramental, consummated marriage: “Thus the marriage bond has been established by God himself in such a way that a marriage concluded and consummated between baptised persons can never be dissolved. This bond, which results from the free human act of the spouses and their consummation of the marriage, is a reality, henceforth irrevocable, and gives rise to a covenant guaranteed by God’s fidelity. The Church does not have the power to contravene this disposition of divine wisdom.”<sup>3</sup>

The Second Vatican Council developed the theology of marriage in its pastoral constitution on the Church in the Modern World, *Gaudium et Spes*. In particular, the Council spoke of marriage as a *covenant* which is brought about by *consent*: “The intimate partnership of life and love which constitutes the married state has been established by the creator and endowed by him with its

own proper laws; it is rooted in the *covenant* of its partners, that is, in their irrevocable personal *consent*.”<sup>4</sup> The pastoral constitution then refers to the three traditional Augustinian *goods* of marriage (children, unity and indissolubility), and effectively adds a fourth: the “mutual giving of two persons”, referred to in canon 1055§1 of the Code of Canon Law as the “good of the spouses”. So we read that: “The intimate union of marriage, as a mutual giving of two persons, and the good of the children demand total fidelity from the spouses and require an unbreakable unity between them.”<sup>5</sup>

Pope Paul VI developed the Catholic Church’s teaching on marriage in his encyclical *Humanae vitae* on human life. While it is remembered almost exclusively because of its teaching on birth control, it speaks of conjugal love in marriage as being:

- fully *human*, arising from the unity of heart and soul, seeking together to attain their human fulfilment;
- *total*, sharing everything with a love that excludes selfishness and unreasonable exceptions;
- *faithful* and *exclusive* until death;
- *creative of life*, intending to bring new life into being.<sup>6</sup>

The teaching of Paul VI was further developed by a

meeting of the Synod of Bishops in Rome in 1980, which resulted in the Apostolic Exhortation of Pope John Paul II on the Christian Family in the Modern World: *Familiaris Consortio*. In this document Pope John Paul II expanded on the teaching of the Second Vatican Council in *Gaudium et Spes* by writing about the sacramental dignity of marriage between two Christians: “The gift of Jesus Christ is not exhausted in the actual celebration of the sacrament of marriage, but rather accompanies the married couple throughout their lives. This fact is explicitly recalled by the Second Vatican Council when it says that Jesus Christ ‘abides with them so that, just as he loved the Church and handed himself over on her behalf, the spouses may love each other with perpetual fidelity through mutual self-bestowal... For this reason, Christian spouses have a special sacrament by which they are fortified and receive a kind of consecration in the duties and dignity of their state. By virtue of this sacrament, as spouses fulfil their conjugal and family obligations, they are penetrated with the Spirit of Christ, who fills their whole lives with faith, hope and charity. Thus they increasingly advance towards their own perfection, as well as towards their mutual sanctification, and hence contribute jointly to the glory of God (*Gaudium et Spes* 48)’.<sup>7</sup>

So if the Catholic Church teaches that marriage is an indissoluble sacrament when it is celebrated between two baptised Christians and consummated, how is it that this same Church can declare such marriages null? The answer is found in the Code of Canon Law<sup>8</sup>, the most recent edition of which was promulgated in 1983, which expresses the teaching of the Catholic Church on marriage in a juridical form. There are found the laws - known as 'canons' - which set out all the requirements for marriage in both divine law and church law. So in order to enter this marriage covenant validly the parties concerned must be free from any impediment (canons 1083-1094), must exchange proper consent (canons 1095-1103), and must - if one or both of them are Catholic - do so according to canonical form (canons 1108-1127). We must therefore look now at the causes of marriage nullity, in order to understand the reasons for which the Catholic Church declares marriage null.

## THE CAUSES OF MARRIAGE NULLITY

### (i) Existence of an Impediment

There are two impediments to marriage which are of natural law and so affect all who may wish to marry. The first is the impediment of impotence, but such a restriction applies only if the impotence is antecedent to the marriage and is perpetual. If there is any doubt about the alleged impotence the marriage is not to be impeded, and sterility neither inhibits nor invalidates marriage. The second is the existence of a previous bond of marriage. This impediment means that someone who is divorced may not remarry in the Catholic Church until and unless their first union is either declared null or dissolved by the Church. The Catholic Church does not recognise divorce as having anything other than civil effects.

With the exception of some of the impediments of consanguinity and affinity, all the other impediments are of ecclesiastical (i.e. Catholic Church) law, and so bind only Catholics and those who wish to marry Catholics.

So, for example, a marriage would be invalid if it were entered by those who were below the minimum age for marriage: 16 for men and 14 for women in canon law - although in practice the Church follows the civil law - minimum age of 16 for both. It is also invalid when it takes place between a Catholic and an unbaptised person without a dispensation; or when it is entered by a Catholic deacon, priest or bishop without being dispensed from the obligation of celibacy; or by a religious brother or sister without obtaining an indult to leave the religious institute.

There are several other impediments to marriage, the most significant of which are those of consanguinity and affinity, i.e. a relationship by blood or by marriage respectively. These rules are necessarily complicated, but the simplest way to remember them is that if two people who are first cousins wish to marry they need a dispensation from the impediment of consanguinity. Any relationship more distant than this does not impede marriage.

So if there is an impediment to a marriage that has not been dispensed, the Catholic Church may declare that union null because it was entered into invalidly by reason of either divine or ecclesiastical law. But surely most impediments to marriage are usually dispensed anyway when Catholics enter marriage in the Catholic Church?

Yes, they are, so it is relatively rare for the Church to declare marriages null due to an impediment which has not been dispensed. We therefore have to turn to the more usual headings of nullity, and these refer to the consent which the parties to a marriage must exchange in order to marry validly.

### (ii) Defect of Consent

When a couple exchange their consent to “a partnership of the whole of life”<sup>9</sup>, they require the *capacity* for marriage, the *knowledge* of what marriage is, and the *will* to enter marriage. So if one or both of the parties lacks the capacity for marriage, or lacks knowledge of marriage, or does not intend to enter marriage, the consent is invalid. For example, two of the more commonly used headings of nullity are used in cases where someone has lacked the capacity for marriage. One of these refers to those who have a “grave lack of discretion of judgment concerning the rights and obligations of marriage which are to be mutually given and accepted” (canon 1095<sup>02</sup>).

So if someone entered marriage because of pressure due to pregnancy, or in order to escape from the parental home, or on the rebound from a previous relationship, or while

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