

**ADDRESS OF HIS HOLINESS BENEDICT XVI
TO THE MEMBERS OF THE TRIBUNAL OF THE ROMAN
ROTA**

*Clementine Hall
Thursday, 29 January 2009*

"The Truth About Marriage and About Its Intrinsic Juridical Nature"

*Distinguished Judges,
Officials and Collaborators of the
Apostolic Tribunal of the Roman Rota,*

The solemn inauguration of the judiciary activity of your Tribunal offers me again this year the joy of receiving you its distinguished members: Monsignor Dean, who I thank for the noble opening address, the College of Prelate Auditors, the Officials of the Tribunal and the Advocates of the Studio Rotale. I address to all of you my cordial greeting, together with the expression of my appreciation for the important task to which you attend as faithful collaborators of the Pope and of the Holy See.

You are expecting the Pope, at the beginning of your working year, to say a word of light and guidance on carrying out your delicate duties. We could dwell upon many topics in this circumstance, but at the distance of 20 years from the Addresses of John Paul ii on psychiatry's incapacity in the nullification of matrimony, of 5 February 1987 (*Address to the Roman Rota, L'Osservatore Romano English edition [ORE], 23 February 1987, p. 6*), and of 25 January 1988 (*ORE, 15 February 1988, n. 7, p. 7*), it seems opportune to ask oneself whether and to what extent these interventions have had an adequate reception in the ecclesiastical tribunals.

This is not the moment to draw up the balance sheet, but the fact of a problem that continues to be very real is visible to everyone. In some cases one can, unfortunately, still sense the pressing need of which my venerable Predecessor spoke: that of preserving the ecclesial community "from the scandal of seeing in practice the value of Christian marriage being destroyed by the exaggerated and almost automatic multiplication of declarations of nullity, in cases of the failure of marriage, on the pretext of some immaturity or psychic weakness on the part of the contracting parties" (*Address to the Roman Rota, n. 9, 5 February 1987, ORE, 23 February 1987, p. 7*).

At our meeting today I am intent on recalling the attention of lawyers to the need to treat the cases with the due depth required by the ministry of truth and charity that is proper to the Roman Rota. To the need for a rigorous procedure, in fact, the above mentioned Addresses, on the basis of Christian anthropological principles, furnish the basic criteria, not only for the close examination of psychiatric and psychological evidence, but also for the judicial definition of the causes.

In this regard it is opportune to recall again some distinctions that draw the demarcation line above all between "psychic maturity which is seen as the goal of human development" and "canonical maturity which instead, is the basic minimum required for establishing the validity of marriage" (*ibid.*, n. 6, p. 7). Secondly, the distinction between incapacity and difficulty insofar as "only incapacity and not difficulty in giving consent and in realizing a true community of life and

love invalidates a marriage" (*ibid.*, n. 7). Thirdly, the distinction between the canonistic dimension of normality, that is inspired by an integral vision of the human person "also includes moderate forms of psychological difficulty", and the clinical dimension that excludes from the concept of it every limitation of maturity and "every form of psychic illness" (*Address to the Roman Rota*, n. 5, 25 January 1988, *ORE*, 15 February 1988, p. 6). And lastly, the distinction between the "minimum capacity sufficient for valid consent" and the idealized capacity "of full maturity in relation to happy married life" (*ibid.*, p. 7).

I then attest to the involvement of the faculties of the intellect and the will in the formation of matrimonial consent, Pope John Paul II, in the above mentioned Address of 5 February 1987, reaffirmed the principle according to which a true incapacity "is to be considered only when an anomaly of a serious nature is present which, however it may be defined, must substantially vitiate the capacity to understand and/or to consent" (*Address to the Roman Rota*, n. 7, *ORE*, 23 February 1987, p. 7).

In this regard it seems opportune to recall that the Code of Canon Law's norm concerning mental incapacity, and the application thereof, was further enriched and integrated by the recent Instruction "*Dignitas connubii*" of 25 January 2005. In fact, in order for this incapacity to be recognized, there must be a particular mental anomaly (*art. 209 1*) that seriously disturbs the use of reason (*art. 209 2, n. 1; can. 1095, n. 1*), at the time of the celebration of marriage and the use of reason or the critical and elective faculty in regard to grave decisions, particularly in freely choosing a state of life (*art. 209 2, n. 2; can. 1095, n. 2*) or that puts the contracting party not only under a serious difficulty but even the impossibility of sustaining the actions inherent in the obligations of marriage (*art. 209 2, n. 3; can. 1095, n. 3*).

However, on this occasion, I would also like to reconsider the theme of the incapacity to contract marriage, of which canon 1095 speaks, in the light of the relationship between human persons and marriage and recalling some fundamental principles that must enlighten lawyers.

First of all it is necessary to rediscover the positive capacity that in principle every human person has to marry by virtue of his very nature as man or woman. Indeed, we run the risk of falling into a form of anthropological pessimism which, in the light of the cultural situation today, considers marriage as almost impossible. Besides the fact that such a situation is not uniform in the various regions of the world, one cannot confuse the real difficulties confronting many, especially young people who conclude that marital union is normally unthinkable and impracticable with the true incapacity of consent. Rather, reaffirming the innate human capacity for marriage is precisely the starting point for helping couples discover the natural reality of marriage and the importance it has for salvation. What is actually at stake is the truth about marriage and about its intrinsic juridical nature (*cf. Benedict XVI, Address to the Roman Rota, 27 January 2007*), which is an indispensable premise if people are to understand and evaluate the capacity required to wed.

In this sense the capacity must be associated with the essential significance of marriage, that is "the intimate partnership of life and the love which constitutes the married state has been established by the Creator and endowed by him with its own proper laws" (*Second Ecumenical Vatican Council, Pastoral Constitution, Gaudium et spes, n. 48*), and, in a particular way, with the essential obligations inherent to it, that must be assumed by the couple (*can. 1095, n. 3*).

This capacity is not measured in relation to a determined level of existential or effective realization of the conjugal union through the fulfillment of the essential obligations, but in relation to the effective will of each one of the partners, who makes possible and operative this realization already at the moment of contracting marriage.

The issue of the capacity or incapacity, therefore, has sense in the measure in which it regards the very act of the marriage contract, since the bond put in act by the will of the spouses constitutes the juridical act of a lofty biblical interpretation of "one flesh" (*Gn 2: 24; Mk 10: 8; Eph*

5: 31; cf. *can. 1061 1*), whose valid subsistence does not depend on the successive behavior of the couple during their married life.

On the other hand, in the reductionist optic that fails to recognize the truth on matrimony, the effective relationship of a true communion of life and love, idealized on a level of pure human well-being, essentially becomes dependent only on accidental factors, and not, instead, on the exercise of human freedom sustained by grace.

It is true that this freedom of human nature, "wounded in the natural powers" and "inclined to sin" (*Catechism of the Catholic Church*, n. 405), is limited and imperfect, but not for this reason does it become inauthentic and insufficient to accomplish that act of self-determination of the parties who form the conjugal pact, that give life to matrimony and to the family founded on it.

Obviously some anthropological and "humanistic" currents aimed at self-realization and egocentric self-transcendence idealize human beings and marriage to such an extent that they then deny the mental capacity of many people, basing this on elements that do not correspond to the essential requirements of the conjugal bond.

Faced with this concept, canon law experts cannot fail to take into account the healthy realism that my venerable Predecessor indicated (*cf. John Paul ii, Address to the Roman Curia, 27 January 1997, n. 4, ORE, n. 6 5 February 1997, p. 3*), because the capacity makes reference to a basic minimum so that the couple can give their being as a male or as a female to establish that bond to which the great majority of human beings are called.

It follows, in principle, that the causes of nullity through mental incapacity require the judge to employ the services of experts to ascertain the existence of a real incapacity (*can. 1680; art. 203 1, DC*), that is always an exception to the natural principle of the capacity necessary to understand, decide and accomplish the giving of self upon which the conjugal bond is founded.

This is what, venerable members of the Tribunal of the Roman Rota, I wished to set forth on this solemn occasion, that is always a pleasant circumstance for me. In exhorting you to persevere with a lofty Christian conscience in the exercise of your office, whose great importance for the life of the Church emerges also from the things just said. May the Lord accompany you always in your delicate work with the light of his grace, to which the Apostolic Blessing that I impart to each one with deep affection is a pledge.