

Dear Members of the Tribunal of the Roman Rota!

I am delighted to meet with you for this annual gathering on the occasion of the beginning of the judicial year. A cordial greeting to the College of Prelate Auditors, beginning with the dean, Bishop Antoni Stankiewicz, whom I thank for his polite words. A salute to the officials, the lawyers and the other collaborators of this tribunal, and all present. This moment permits me the opportunity of renewing my esteem for the work that you do in the service of the Church and to encourage you to an ever greater commitment in such a delicate and important sector for pastoral care and the "*salus animarum*."

The relationship between law and pastoral care was at the center of the postconciliar debate over canon law. The well known statement of the Venerable Servant of God John Paul II, according to which "it is not true that to be more pastoral the law must make itself less juridical" (Allocution of the Roman Rota, Jan. 18, 1990, No. 4: AAS 82 [1990], p. 874) expresses the radical overcoming of apparent opposition. "The juridical dimension and the pastoral dimension," he said, "are inseparably united in the pilgrim Church on this earth. First of all, there is their harmony that derives from their common finality: the salvation of souls" (ibid.).

In my first meeting with you in 2006, I tried to show the authentic pastoral meaning of the processes of the annulment of marriage, based on love of the truth (cf. Allocution to the Roman Rota, Jan. 28, 2006: AAS 98 [2006], pp. 135-138). Today I would like to pause to consider the juridical dimension that is inherent in the pastoral activity of preparation and admission to marriage, to try to shed light on the connection between such activity and the judicial matrimonial processes.

The canonical dimension of the preparation for marriage is not perhaps an immediately obvious element. In effect, on the one hand we observe how in the courses of preparation for marriage, the canonical questions occupy a very modest place, if not insignificant, insofar as we tend to think that the future spouses have a very minimal interest in questions that are reserved for specialists. On the other hand, while not neglecting any of the necessities of the juridical activities that precede marriage, ready to accept that "nothing be opposed to its valid and licit celebration" (CIC, Canon 1066), there is a widespread belief according to which the examination of the spouses, the marriage banns and the other appropriate measures taken in the necessary pre-matrimonial investigations (cf. ibid., Canon 1067), among which are the marriage preparation courses, are merely formal obligations. In fact, it is often thought that in admitting couples to marriage, pastors must proceed with generosity since the natural right of the persons to marry is in play.

It is a good thing, then, to reflect on the juridical dimension of marriage itself. It is an issue that I have touched on in the context of reflection on the truth about marriage, in which I stated, among other things, that: "[w]ith regard to the subjective and libertarian relativizing of the sexual experience, the Church's tradition clearly affirms the natural juridical character of marriage, that is, the fact that it belongs by nature to the context of justice in interpersonal relations. In this perspective, the law is truly interwoven with life and love as one of the intrinsic obligations of its existence" (Allocution to the Roman Rota, Jan. 27, 2007, AAS 99 [2007], p. 90). Thus, there are not [two different kinds of marriage:] an existential marriage ("*matrimonio della vita*") and a legal marriage: there is only one marriage, which is constitutively a real juridical bond between the man and the woman, a bond upon which the authentic conjugal dynamic of life and love rests. The marriage celebrated by the spouses, the one that pastoral care concerns itself with and that which canonical doctrine focuses on, are a single natural and salvific reality, whose richness certainly permits a variety of approaches, without however losing its essential identity. The juridical aspect is essentially linked to the essence of marriage. This is understood in the light of a non-positivistic notion of law, but considered in the perspective of the relational character of justice.

The right to marriage, or "*ius connubii*," must be seen from this perspective. It is not, therefore, a subjective pretense that must be satisfied by pastors through a mere formal recognition, independently of the actual content of the union. The right to contract marriage presupposes that one can marry, and one intends to authentically celebrate marriage, that is, to do so in the truth of its essence as it is taught by the Church. No one can boast of a right to a nuptial ceremony. The "*ius connubii*," in fact, refers to the right to

celebrate a real marriage. The "*ius connubii*," therefore, is not being denied where it is evident that the premises for its exercise are not present, that is, if the requested capacity to wed is manifestly lacking, or an objective is sought that is contrary to the natural reality of marriage.

In this regard I would like to reaffirm what I wrote after the Synod of Bishops on the Eucharist: "Given the complex cultural context which the Church today encounters in many countries, the synod also recommended devoting maximum pastoral attention to training couples preparing for marriage and to ascertaining beforehand their convictions regarding the obligations required for the validity of the sacrament of Matrimony. Serious discernment in this matter will help to avoid situations where impulsive decisions or superficial reasons lead two young people to take on responsibilities that they are then incapable of honoring (cf. Proposition 40). The good that the Church and society as a whole expect from marriage and from the family founded upon marriage is so great as to call for full pastoral commitment to this particular area. Marriage and the family are institutions that must be promoted and defended from every possible misrepresentation of their true nature, since whatever is injurious to them is injurious to society itself" (Post-Synodal Exhortation "*Sacramentum caritatis*," Feb. 22, 2007, No. 29: AAS 99 [2007], p. 130).

Preparation for marriage, in its various phases described by Pope John Paul II in the apostolic exhortation "*Familiaris consortio*," certainly has its purposes that transcend the juridic dimension, since its horizon is constituted by the whole good, human and Christian, of the couple and their future children (cf. no. 66: AAS 73 [1981], pp. 159-162), definitively directed to the holiness of their life (cf. CIC, can. 1063, No. 2). Nevertheless, we must never forget that the immediate objective of such preparation is that of promoting the free celebration of an authentic marriage, that is, the constituting of a bond of justice and love between the couple, with the characteristics of unity and indissolubility, ordained to the good of the spouses and to the procreation and education of children, and which between baptized persons constitutes one of the sacraments of the New Covenant. With this an extrinsic ideological message is not addressed to the couple, much less is a cultural model imposed; rather the betrothed are made able to discover the truth of a natural inclination and a capacity for commitment that is inscribed in the being of their man-woman relationship. Law as an essential component of the matrimonial relation flows from here; it is rooted in a natural power of the couple that is actualized in consensual self-giving. Reason and faith concur to illuminate this truth of life but it must be clear in any case that, as the Venerable John Paul II taught, "the Church does not refuse the matrimonial celebration to those who are well-disposed, even if imperfectly prepared from the supernatural point of view, so long as the person has the right intention to wed according to the natural reality of marriage" (Allocution to the Roman Rota, Jan. 30, 2003, No. 8: AAS 95 [2003], p. 397). On this view, a special care must accompany the marriage preparation whether it be remote, proximate or immediate (cf. John Paul II, apostolic exhortation "*Familiaris consortio*," Nov. 22, 1981, No. 66: AAS 73 [1981], pp. 159-162)

Among the means for judging that the plan of the engaged couple is really conjugal, there is the pre-marriage examination. This examination has a principally juridical purpose: to judge that nothing is opposed to the valid and licit celebration of the marriage. To say that it is juridical is not to say that it is formalistic, as if it were a bureaucratic task consisting in filling out a form based on the answers to set questions. It is rather a unique pastoral event -- to be valued for all the seriousness and attention that it demands -- in which, through a dialogue full of respect and cordiality, the pastor tries to help the person seriously place himself before the truth about himself and his human and Christian vocation to marriage. In this case the dialogue, always conducted with man and woman separately -- without diminishing the importance of other conversations with the couple -- requires a climate full of sincerity in which there must be an emphasis on the fact that those entering into the contract are the ones primarily concerned and primarily obligated in conscience to celebrate a valid matrimony.

In this way, with the various means at our disposal for a sound preparation and verification, we can develop effective pastoral care aimed at preventing matrimonial annulments. We must do our best to break -- to the extent that it is possible -- the vicious circle that often exists between a careless admission to marriage, without adequate preparation and a serious examination of the necessary requirements for its celebration, and judicial declaration sometimes just as careless, but opposite in significance, in which

the same marriage is considered null solely on the basis of the claim of its failure. It is true that not all the causes of a future declaration of nullity can be identified or manifested in the preparation for the marriage, but, at the same time, it would not be right to block access to marriage on the basis of unfounded presumptions, such as that as holding that in today's world people are generally incapable of marriage or only have an apparent desire for it. In light of this it is evidently important that there be a more acute awareness of the responsibility that those charged with the care of souls have in these matters. Canon law in general, and that dealing with marriage and trials in particular, certainly demands a special preparation, but a knowledge of the basic and the immediately practical aspects of Canon Law, relative to our proper functions, constitutes a formative exigency of fundamental relevance for all pastoral workers, in particular for those who are engaged in the pastoral care of families.

All of this requires, further, that the conduct of ecclesiastical tribunals send a univocal message about what is essential to marriage in harmony with the magisterium and Canon Law, speaking with one voice. Seeing the necessity of the unity of jurisprudence entrusted to this Tribunal, the other ecclesiastical tribunals must conform to the jurisprudence of the Roman Rota (cf. John Paul II, Allocution to Roman Rota, Jan. 17, 1998, No. 4: AAS 90 [1998], p. 783). Recently I insisted on the necessity of ruling rightly about the causes related to consensual incapacity (cf. Allocution to the Roman Rota, Jan. 29, 2009: AAS 101 [2009], pp. 124-128). The question continues to be quite relevant and unfortunately incorrect positions persist, such as that of identifying the discretion of judgment required for marriage (cf. CIC, Canon 1095, No. 2) with the prudence expected in the decision to marry, thus confusing a question of capacity with another that does not touch validity, since it concerns the degree of practical wisdom with which a decision is made that is, in any case, matrimonial. Graver still would be the misunderstanding if one were to attribute invalidating efficaciousness to imprudent choices made in the marriage.

In the sphere of nullity created by the exclusion of the essential goods of marriage (cf. *ibid.* can. 1101, No. 2) a serious commitment is necessary, moreover, so that the judicial rulings reflect the truth about marriage, the same truth that must illuminate admission to marriage. I am thinking, in a special way, of the exclusion of the "*bonum coniugum*." In relation to the this exclusion the same danger that threatens the correct application of the norms dealing with incapacity seems to repeat itself, and, that is, looking for the causes of nullity in the behaviors that do not regard the constitution of the bond but rather its realization in life. We must resist the temptation to transform the simple failures of the spouses in the conjugal life into defects of consent. True exclusion can only manifest itself when the ordination to the good of the spouses is harmed (cf. *ibid.*, Canon 1055, No. 1), excluded with a positive act of the will. Without a doubt the cases in which there is a failure to recognize the other as a spouse are an exception. This occurs when the essential ordination of the community of conjugal life is excluded from the good of the other. The clarification of these hypotheses about the exclusion of the "*bonum coniugum*" must be carefully assessed by the jurisprudence of the Roman Rota.

In concluding these reflections of mine, I turn to consider the relationship between law and pastoral care. It is often the object of misunderstandings, to the detriment of law, but also to the detriment of pastoral work. On the contrary, it is necessary to promote in all sectors, and in a special way in that of marriage and the family, profound harmony between the pastoral and the juridical, which will certainly show itself to be fruitful for those who approach marriage.

Dear members of the Tribunal of the Roman Rota, I entrust all of you to the powerful intercession of the Blessed Virgin Mary, so that you never lack divine assistance in carrying out your daily labors with fidelity, the spirit of service and with fruitfulness, and I gladly impart to all a special Apostolic Blessing.