



## The Holy See

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**ADDRESS OF HIS HOLINESS POPE BENEDICT XVI  
TO THE TRIBUNAL OF THE ROMAN ROTA  
FOR THE INAUGURATION OF THE JUDICIAL YEAR**

*Clementine Hall*

*Thursday, 29 January 2009*

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

The solemn inauguration of the judiciary activity of your Tribunal offers me once again this year the joy of receiving its distinguished members: Monsignor Dean, whom I thank for his gracious words of greeting, the College of Prelate Auditors, the Officials of the Tribunal and the Advocates of the *Studium Rotale*. I offer all of you my own cordial greetings, together with the expression of my appreciation for the important responsibilities which you carry out as faithful collaborators of the Pope and of the Holy See.

You are expecting from the Pope, at the beginning of your working year, a word of light and guidance in the fulfilment of your demanding work. There are any number of topics which we might discuss on this occasion, but now, some twenty years after the Addresses of Pope John Paul II regarding psychic incapacity in the causes of matrimonial nullity (5 February 1987, *L'Osservatore Romano* English edition, 23 February 1987, p. 6 and 25 January 1988, *ibid.*, 15 February 1988, p. 7), it seems fitting to question the extent to which these interventions have had an adequate reception in ecclesiastical tribunals.

This is not the moment to draw up a balance sheet, but no one can fail to see that there continues to be a concrete and pressing problem in this regard. In some cases, unfortunately, one can still perceive the urgent need to which my venerable Predecessor pointed: that of preserving the ecclesial community "from the scandal of seeing the value of Christian marriage being destroyed in practice 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*, 5 February 1987, n. 9).

In our meeting today, I wish to draw the attention of those engaged in the practice of law to the need to handle cases with the depth and seriousness required by the ministry of truth and charity proper to the Roman Rota. Indeed, responding to the need for procedural precision, the aforementioned Addresses provide, on the basis of the principles of Christian anthropology, fundamental criteria not only for the weighing of expert psychiatric and psychological reports, but also for the judicial settlement of causes. In this regard it is helpful to recall several clear-cut distinctions. First of all, the distinction between "the psychic maturity which is seen as the goal of human development" and, on the other hand, "the canonical maturity which is the basic minimum required for establishing the validity of marriage" (*Address to the Roman Rota*, 5 February 1987, n. 6). Second, the distinction between incapacity and difficulty, inasmuch as "incapacity alone, and not difficulty in giving consent and in realizing a true community of life and love, invalidates a marriage" (*ibid.*, n. 7). Third, the distinction between the canonical approach to normality, which, based on an integral vision of the human person, "also includes moderate forms of psychological difficulty", and the clinical approach, which excludes from the concept of normality every limitation of maturity and "every form of psychic illness" (*Address to the Roman Rota*, 25 January 1988, n. 5). And finally, the distinction between the "minimum capacity sufficient for valid consent" and the ideal capacity "of full maturity in relation to happy married life" (*ibid.*).

Furthermore, based on the engagement of the faculties of the intellect and the will in the formation of matrimonial consent, Pope John Paul II, in the aforementioned Address of 5 February 1987, reaffirmed the principle that 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 will" (*Address to the Roman Rota*, 5 February 1987, n. 7).

In this regard it seems fitting to recall that the norm of the Code of Canon Law regarding mental incapacity, so far as its application is concerned, was amplified and completed by the recent Instruction *Dignitas Connubii* of 25 January 2005. The Instruction requires that, for such incapacity to be established, at the time of the celebration of marriage there must already have been present a specific mental anomaly (art. 209 § 1) which seriously impairs the use of reason (art. 209 § 2, n. 1; Can. 1095, n. 1) or the critical and elective faculty with regard to making serious decisions, particularly concerning the free choice of a state of life (art. 209 § 2, n. 2; Can. 1095, n. 2), or which produces in the contracting party not only a serious difficulty but also the impossibility of fulfilling the duties inherent in the obligations of marriage (art. 209 § 2, n. 3; Can. 1095, n. 3).

On this occasion, however, I would like to reconsider the theme of the incapacity to contract marriage, as treated in Canon 1095, also in the light of the relationship between the human person and marriage, and to recall several fundamental principles which must guide those engaged in the practice of law.

First of all, there is a need for a new and positive appreciation of the capacity to marry belonging in principle to every human person by virtue of his or her very nature as a man or a woman. We tend

in fact to risk falling into a kind of anthropological pessimism which, in the light of today's cultural context, would consider marriage as practically impossible. Apart from the fact that this context is not uniform in the various parts of the world, genuine incapacity to consent cannot be confused with the real difficulties facing many people, especially the young, which lead them to conclude that marital union is, as a rule, inconceivable and impracticable. Rather, a reaffirmation of the innate human capacity for marriage is itself the starting point for enabling couples to discover the natural reality of marriage and its importance for salvation. Ultimately, what is at stake is the truth about marriage itself and its intrinsic juridical nature (cf. Benedict XVI, *Address to the Roman Rota*, 27 January 2007), which is an indispensable premise for the ability to understand and evaluate the capacity required to marry.

Capacity in this sense has to be seen in relation to the essential nature of marriage as "the intimate partnership of life and conjugal love established by the Creator and endowed with its proper laws" (Second Vatican Ecumenical Council, Pastoral Constitution *Gaudium et Spes*, n. 48), and, in a particular way, with essential and inherent obligations which are to be accepted by the couple (Can. 1095, n. 3). This capacity is not calculated in relation to a specific degree of existential or actual realization of the conjugal union by the fulfillment of the essential obligations, but rather in relation to the effective will of each of the partners, which makes that realization possible and operative from the very moment that the marriage is contracted. To speak of capacity or incapacity, therefore, is meaningful to the extent that it concerns the act itself of contracting marriage, since the bond which comes into being by the will of the spouses constitutes the juridical reality of the biblical "one flesh" (*Gn 2: 24; Mk 10:8; Eph 5:31*; cf. Can. 1061 §1), and its continuing validity does not depend on the subsequent conduct of the couple during their married life. In a very different way, a reductionist approach which disregards the truth about marriage sees the effective establishment of a genuine communion of life and love, idealized at the level of a purely human well-being, as essentially dependent on purely accidental factors, rather than on the exercise of human freedom sustained by grace. It is true that this freedom of human nature, "wounded in the natural powers proper to it", and "inclined to sin" (*Catechism of the Catholic Church*, n. 405), is limited and imperfect, but it is not thereby unauthentic and insufficient for carrying out that act of self-determination by the parties which is the conjugal covenant, which gives rise to marriage and to the family founded on it.

Obviously certain anthropological and "humanistic" currents of thought, aimed at self-realization and egocentric self-transcendence, so idealize the human person and marriage that they end up denying the psychic capacity of a great number of people, basing this on elements which do not correspond to the essential requirements of the conjugal bond. Faced with such conceptions, those engaged in the practice of ecclesial law cannot prescind from the healthy realism spoken of by my venerable Predecessor (cf. John Paul II, *Address to the Roman Rota*, 27 January 1997, n. 4), since capacity refers to the minimum needed for those marrying to give their being as a male person and a female person in order to establish that bond to which the vast majority of human beings are called. It follows that, as a matter of principle, causes of nullity due to psychic

incapacity require the judge to employ the service of experts to ascertain the existence of a genuine incapacity (Can. 1680; art. 203 1), which is always an exception to the natural principle of the capacity needed to understand, decide for and carry out the mutual self-giving from which the conjugal bond arises.

This then, distinguished members of the Tribunal of the Roman Rota, is what I wished to present to you on this solemn occasion, which is always a pleasant one for me. I exhort you to persevere with deep Christian conscientiousness in the exercise of your office, whose great importance for the life of the Church is evident from all that I have said. May the Lord always assist you in your demanding work by the light of his grace, in pledge of which I impart to all of you, with deep affection, my Apostolic Blessing.

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