The Holy See

ADDRESS OF JOHN PAUL II
TO THE MEMBERS OF THE TRIBUNAL OF THE ROMAN ROTA
FOR THE INAUGURATION OF THE JUDICIAL YEAR

Thursday, 29 January 2004

Dear Members of the Tribunal of the Roman Rota,

1. I am delighted to have this annual meeting with you for the inauguration of the Judicial Year. It offers me a favourable opportunity to reaffirm the importance of your ecclesial ministry and the need for your legal work.

I cordially greet the College of Prelate Auditors, starting with the Dean, Mons. Raffaello Funghini; I thank him for expressing his profound thoughts on the meaning and value of your work. I then greet the Officials, the Advocates and the other Collaborators of this Apostolic Tribunal, as well as the Members of the *Studium Rotale* and all who are present here.

2. At our meetings in recent years I have addressed certain fundamental aspects of marriage: its nature ordered toward the good, its indissolubility, its dignity as a sacrament. Actually, various other types of appeal also reach the Tribunal of the Apostolic See on the basis of the norms established by the *Code of Canon Law* (cf. cann. 1443-1444) and the Apostolic Constitution *Pastor Bonus* (cf. arts. 126-130). The Tribunal is required first and foremost, however, to focus on marriage. Today, therefore, in response to the concerns the Dean has expressed, I would like once again to reflect on the matrimonial cases submitted to you and, in particular, on one pastoral and juridical aspect that emerges from them: I am alluding to the *favor iuris* (the favour of the law) that marriage enjoys, and to the associated presumption of its validity in case of doubt, as declared in can. 1060 of the Latin Code and in can. 779 of the Code of Canons of the Eastern Churches.

Indeed, this has met at times with criticism. To some people, these principles seem to be

anchored in social and cultural situations of the past, in which the request to marry in accordance with canon law would normally have implied that those engaged to be married understood and accepted the true nature of marriage. In the crisis that unfortunately marks the institution of marriage in so many milieus today, those people hold that often the very validity of the consent may be said to be jeopardized, due to various forms of incapacity or to the absence of the essential properties. With regard to this situation, the critics mentioned wonder if it might not be correct to presume the invalidity of the marriage contracted rather than its validity.

In this perspective, the *favor matrimonii,* they say, should give way to the *favor personae,* the *favor veritatis subiecti* or the *favor libertatis.*

3. To evaluate these new attitudes correctly, one should first of all identify the foundation and limitations of the favor in question. Indeed, this principle easily transcends the presumption of validity since it shapes from within all the canonical norms on marriage, both substantial and procedural. The *support* of marriage, in fact, must inspire the entire activity of the Church, of Pastors, of the faithful and of civil society: in a word, of all people of good will. This attitude is not based on a more or less debatable choice but rather on the appreciation of the objective good that every conjugal union and every family represents. It is precisely when the personal and social recognition of so fundamental a good is threatened that the depths of its importance for individuals and communities are discovered.

In light of these considerations, the holy Pastors' duty to defend and foster marriage is quite clear. However, this is also a specific responsibility of all the faithful, indeed, of all men and women and the civil authorities, each according to his or her own competency.

4. The *favor iuris* reserved for marriage implies the presumption of its validity until the contrary is proven (cf. *CIC,* can. 1060; *CCEO,* can. 779). To grasp the significance of this presumption one should first remember that it does not represent an exception with regard to a general rule in the opposite sense. On the contrary, it is a matter of applying to marriage a presumption that constitutes a fundamental principle of every juridical disposition: human acts licit in themselves and that affect juridical relations are presumed valid, even if proof of their invalidity is obviously admissible (cf. *CIC,* can. 124 2; *CCEO,* can. 931 2).

This presumption cannot be interpreted as the mere protection of appearances or of the *status quo* as such, since the possibility of contesting the act is also provided for, within reasonable limits.

However, what appears outwardly to be correctly placed, to the extent that it is lawful, deserves initially to be considered valid and, consequently, to be upheld by law since this external reference point is the only one which the legal system realistically provides to discern situations which must be safeguarded. To hypothesize the opposite, that is, the obligation to provide positive proof of the

validity of the respective acts, would mean exposing the subjects to a demand that would be almost impossible to achieve. Indeed, the proof must include the many presuppositions and prerequisites of the act, which are often long drawn out and involve a large number of persons and previous, interconnected acts.

5. Then what can one say to the argument which holds that the failure of conjugal life implies the invalidity of the marriage? Unfortunately, this erroneous assertion is sometimes so forceful as to become a generalized prejudice that leads people to seek grounds for nullity as a merely formal justification of a pronouncement that is actually based on the empirical factor of matrimonial failure. This unjust formalism of those who are opposed to the traditional *favor matrimonii* can lead them to forget that, in accordance with human experience marked by sin, a valid marriage can fail because of the spouses' own misuse of freedom.

Admission of true nullities should rather lead to ascertaining with greater seriousness at the time of the marriage the necessary prerequisites for matrimony, especially those concerning the consent and true disposition of the engaged couple. Parish priests and those who work with them in this area have the grave duty not to surrender to a purely bureaucratic view of the pre-matrimonial examination of the parties, specified in can. 1067. Their pastoral intervention must be dictated by awareness that at precisely that moment, people are able to discover the natural and supernatural good of marriage and consequently commit themselves to pursuing it.

6. The presumption of the validity of a marriage is truly set in a broader context. Often the real problem is not so much the presumption in words as the overall vision of marriage itself, hence, the process to ascertain the validity of its celebration. Such a process is essentially inconceivable apart from the context of ascertaining the truth. This teleological reference to the truth is what unites all the protagonists of the process, despite the diversity of their roles. In this regard, a more or less open scepticism has been inferred as to the human ability to recognize the truth about the validity of a marriage. In this area too, a renewed confidence in human reason is necessary with regard both to the essential aspects of marriage and to the specific circumstances of each union.

The tendency to instrumentally broaden the causes for nullity, losing sight of the bounds of objective truth, involves a structural distortion of the entire process. In this perspective the preliminary investigation would lose its effectiveness since its outcome would be preordained. The search itself for the truth, to which the judge is seriously bound *ex officio* (*CIC,* can. 1452; *CCEO,* can. 1110) and for the attainment of which he seeks the help of the defender of the bond and of the advocate, would result in a series of empty formalities. The constitutive aspiration to the truth of the sentence would be lost or seriously minimized were it to be subjected to a series of preordained responses, as these would undermine its critical power of inquiry and analysis. Key concepts such as moral certitude and the free examination of the proofs would be left without their necessary reference point in objective truth (cf. *CIC,* can. 1608; *CCEO,* can. 1291), the search for which would be abandoned or considered unattainable.

7. Going back further, the problem concerns the concept of marriage seen in a global vision of reality. The essential dimension of the justness of marriage, which is based on an intrinsically juridical reality, is replaced by empirical viewpoints of a sociological, psychological, etc. kind, as well as by various forms of juridical positivism. Without in any way belittling the valid contributions of sociology, psychology or psychiatry, it cannot be forgotten that an authentically juridical consideration of marriage requires a metaphysical vision of the human person and of the conjugal relationship. Without this ontological foundation the institution of marriage becomes merely an extrinsic superstructure, the result of the law and of social conditioning, which limits the freedom of the person to fulfil himself or herself.

It is necessary instead to rediscover the truth, goodness and beauty of the marriage institution. Since it is the work of God himself, through human nature and the freedom of consent of the engaged couple, marriage remains an indissoluble personal reality, a bond of justice and love, linked from eternity to the plan of salvation and raised in the fullness of time to the dignity of a Christian sacrament. It is this reality that the Church and the world must encourage! This is the true *favor matrimonii!*

In presenting these ideas to you for reflection, I would like once again to express to you my appreciation of your sensitive and demanding work in the administration of justice. With these sentiments, as I pray for constant divine help for each one of you, dear Prelate Auditors, Officials and Advocates of the Roman Rota, I impart my Blessing to you all with affection.