



# The Holy See

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## **ADDRESS OF JOHN PAUL II TO THE TRIBUNAL OF THE ROMAN ROTA**

*4 February 1980*

To see you around me, beloved sons, gathered for the opening of the new judicial year, gives me joy and comfort, as it does, too, to have heard the confirmation of your sentiments of common gratitude from your worthy dean, Monsignor Heinrich Ewers. I, too, thank you heartily and confirm the sentiments of benevolence which I already manifested to each of you in the visit which your dean mentioned.

1. On December 8 last, as you know, I made public my message for the celebration of the thirteenth World Day of Peace, the content of which is summed up in these words: "Truth, the inherent strength of peace." On this occasion, I would like to take some time to develop a particular aspect of the same subject, which is closely related to your ministry. Truth does not become the power of peace unless through justice. Holy Scripture, speaking of messianic times, asserts on the one hand that justice is the source and companion of peace: "In his days shall justice spring up, and an abundance of peace" (Ps 72:7), and on the other hand it repeatedly stresses the bond that associates truth with justice: "Mercy and truth have met each other: justice and peace have kissed" (Ps 85:11 3 ), and again: "He shall judge the world with justice, and the people with his truth" (Ps 96:13 4 ). Drawing inspiration from these and other texts of the sacred books, theologians and canonists, both medieval and modern, go so far as to affirm that justice has a relationship of dependence on truth. A famous canonical axiom asserts: "Truth is the basis, foundation, and mother of justice" (*Veritas est basis, fundamentum seu mater iustitiæ*, A. BARBOSA, *De Axiomatibus Iuris usufrequentioribus*, Axioma 224, *Veritas*, no. 5, in *Tractatus varii*, Lyons, 1678, p. 136); and theologians, headed by St. Thomas (*Summa Theologiæ*, I, q. 21, a. 2, c), have expressed themselves in the same way, Pius XII summed up the thought of the latter, affirming forcefully that "truth is the law of justice," and then commenting: "The world has need of that truth, which is justice, and of that justice, which is truth" (October 1, 1942, *supra* pp. 21–22).

2. To refer to the field which is specifically yours, in all ecclesiastical trials truth must always be, from the beginning to the judgment, the foundation, mother, and law of justice. And since the main object of your activity is "the nullity or not of the marriage bond" as your dean has just stated—it seemed to me opportune during our meeting to reflect on matrimonial nullity trials.

The immediate purpose of these trials is to ascertain whether or not the facts exist that by natural, divine or ecclesiastical

law invalidate marriage, in order to be able to issue a true and just sentence concerning the alleged non-existence of the marriage bond.

The canonical judge must establish, therefore, whether the marriage celebrated was a true one. He is therefore, bound by truth, which he tries to investigate with diligence, humility, and charity.

And this truth “will make . . . free” (Jn 8:32) those who turn to the Church, tormented by painful situations, and above all by doubt whether that dynamic reality, involving the whole personality of two beings, which is the marriage bond, exists or not.

To limit as much as possible the margins of error in fulfilling the precious and delicate service performed by you, the Church has elaborated a procedure which, with the intention of ascertaining the objective truth will, on the one hand, ensure the parties the greatest security in advancing their own arguments, and on the other, consistently respect the divine command: “Therefore what God has joined together, let no one separate” (Mk 10:9).

3. All acts of the ecclesiastical judgment, from the petition to the documents of defense, can and must be a source of truth. This is especially true of the “acts of the case,” and, among these, the “acts of the instruction,” since the instruction has as its specific purpose the gathering of proofs concerning the truth of the alleged fact, in order that the judge may on this foundation pronounce a just judgment.

For this purpose on being summoned by the judge, the parties, the witnesses, and if necessary the experts will appear to be questioned. The oath to tell the truth, which is required from all these persons, is perfectly consistent with the purpose of the instruction. It is not a question of creating an event that has never existed, but of making clear and emphasizing a fact that took place in the past and that still continues, perhaps, in the present. Certainly, each of these persons will tell his or her own truth, which will normally be the objective truth or a part of it, often considered from various points of view, colored with the hues of personal temperament, perhaps with some distortion or even mingled with error. But in any case they must all act faithfully, without betraying either what they think is objective truth, or their own conscience.

4. Alexander II pointed out in the twelfth century: “Often witnesses, corrupted by money, are easily induced to give false testimony” (*Sæpe contingit quod testes, corrupti prætio, facile inducantur ad falsum testimonium proferendum*, in c. 10, *De præsumptionibus*, II, 23, ed. Richter-Friedberg, vol. 2, p. 355). Unfortunately not even today are witnesses immune from the possibility of prevarication. For this reason Pius XII, in the address on unity of purpose and action in matrimonial suits, exhorted not only the witnesses, but all those who take part in the trial, not to depart from the truth: “In matrimonial cases before ecclesiastical tribunals there is never room for trickery, perjury, subornation, or fraud of any kind!” (October 2, 1944, *supra* p. 24).

If this should happen, however, the acts of the instruction would certainly not be limpid sources of truth and they might lead the judges, in spite of their moral integrity and their faithful effort to discover the truth, to err in passing judgment.

5. Once the instruction is over, begins for the individual judges, who will have to decide the case, the most demanding and delicate phase of the trial. Each one must arrive, if possible, at moral certainty concerning the truth or existence of

the fact, since this certainty is an indispensable requisite in order that the judge may pass judgment: first of all, so to speak, in his heart, and then voting in the gathering of the judicial college.

The judge must draw this certainty “ex actis et probatis.” First and foremost ex actis since it must be presumed that the acts are the source of truth. Therefore the judge, following the norm of Innocent III, “must examine everything” (*Iudex . . . usque ad prolationem sententiæ debet universa rimari*, in c. 10, *De fide instrumentorum*, 11, 22; ed. Richter-Friedberg, vol. 2, p. 352), that is, he must examine the documents carefully, letting nothing escape his attention. Then ex probatis, because the judge cannot limit himself to giving credence to affirmations alone; on the contrary, he must keep in mind the possibility that, during the instruction, the objective truth may have been obscured by shadows brought about by different causes, such as the forgetting of some facts, their subjective interpretation, carelessness and sometimes malice and fraud. The judge must act with a critical sense. A difficult task, because there may be many errors, while truth, on the contrary, is only one. It is necessary, therefore, to look in the documents for proofs of the alleged facts, and then proceed to a criticism of each of these proofs, comparing it with others, in such a way that the earnest advice of St. Gregory the Great may be put into practice seriously: “The unconsidered shall not be rashly judged” (*ne temere indiscussa iudicentur*, *Moralium*, l. 19, c. 25, no. 46., in PL, vol. 76, col. 126).

The pleadings of the advocates, the observations of the defender of the bond, and the possible opinion of the promoter of justice exist for the purpose of helping this delicate and important work. They, too, in carrying out their task, the first in favor of the parties, the second in defense of the bond, the third in *iure inquirendo*, must serve the truth, in order that justice may triumph.

6. It is necessary, however, to keep in mind that the purpose of this investigation is not just any knowledge of the fact, but the reaching of “moral certainty,” that is, of that certain knowledge which “is based on the constancy of the laws and usage that govern human life” (PIUS XII, October 1, 1942, *supra* p. 18). This moral certainty is a guarantee for the judge that he has found the truth about the fact to be judged, that is, the truth which is the foundation, mother and law of justice, and so makes him sure that he is—from this aspect—able to pronounce a just judgment. This is precisely the reason why the law demands this certainty of the judge, to enable him to proclaim a just judgment ([CIC 1 ] c. 1869, §1).

Taking advantage of the doctrine and jurisprudence that had developed particularly in more recent times, Pius XII declared in an authentic way the canonical concept of moral certainty in the allocution addressed to your tribunal on October 1, 1942. Here are the words that pertain to our case: “Between the two extremes of absolute certainty and quasi-certainty or probability, is that moral certainty which is usually involved in the cases submitted to your court . . . It is characterized on the positive side by the exclusion of well-founded or reasonable doubt, and in this respect it is essentially distinguished from the quasi-certainty which has been mentioned; on the negative side, it does admit the absolute possibility of the contrary and in this it differs from absolute certainty. The certainty of which we are now speaking is necessary and sufficient for the rendering of a judgment” (*supra* p. 19).

Consequently no judge may pass sentence in favor of the nullity of a marriage if he has not first acquired the moral certainty of the existence of this nullity. Probability alone is not enough to decide a case. To any compromise in this connection, there could be applied what has wisely been said of other laws concerning marriage; any relaxation contains within it an impelling dynamic: “if the custom obtained, the way is paved for the toleration of divorce in the Church,

although covered by another name” (letter from the prefect of the Council for the Public Affairs of the Church to the president of the National Conference of Catholic Bishops, U.S.A., June 20, 1973 7 ).

7. The administration of justice entrusted to the judge is a service to truth and at the same time it is the exercise of a duty belonging to the public order. For the law is entrusted to the judge “for its logical, normal application” (PAUL VI, January 31, 1974, supra p. 126).

The plaintiffs, therefore, are able to invoke in their favor a law, which recognizes in the fact adduced a sufficient reason, for natural or divine, positive or canonical law, to invalidate their marriage; through this law the step will be taken from the truth of the fact to justice or recognition of what is due.

The judge’s duties toward the law are, therefore, serious and multiple. I will mention only the first and most important one, which, moreover, implies all the others: faithfulness! Faithfulness to the law— to divine, natural and positive law, and to canon law, substantial and procedural.

8. The typical objectivity of justice of the trial, in the *quæstio facti*, finds expression in adherence to the truth; and in the *quæstio iuris*, is expressed in faithfulness. It is evident that these are concepts, which have a great affinity. The faithfulness of the judge to the law must lead him to identify himself with it, so that it can rightly be said, as M.T. Cicero wrote, that the judge is the law itself speaking: “Magistratum legem esse loquentem” (De legibus, L. 3, n. 1, 2; ed. of Association G. Budé, Paris, 1959, p. 82). It will then be this same faithfulness that impels the judge to acquire that group of qualities needed to carry out the other duties with regard to the law: wisdom to understand it, learning to illustrate it, zeal to defend it, prudence to interpret it in its spirit beyond the simple facade of the words (*nudus cortex verborum*), careful consideration, and Christian equity to apply it.

It comforts me to see how great your faithfulness to the law of the Church has been in the midst of the difficult circumstances of recent years, when the values of married life, rightly highlighted by the Second Vatican Council, and the progress of the human sciences, especially psychology and psychiatry, have brought to your tribunal new cases and new approaches to matrimonial causes, which are not always correct. It has been your merit— after a serious and delicate study of the doctrine of the Council and of the above-mentioned sciences—to clarify *quæstiones iuris* in which you carried out excellently your duties to the law, separating the true from the false or bringing light where there was confusion, as, for example, by reducing a good many cases, which were presented as new, to the fundamental ground of lack of consent. In this way you confirmed, in a counter argument, the splendid teaching of my predecessor, Pope Paul VI of venerable memory, on consent as the essence of marriage (February 9, 1976, supra pp. 133–137).

9. This faithfulness also will enable you judges to give a clear and respectful answer to the questions submitted to you—as your service of truth demands. If the marriage is null and is declared such, the two parties are free in the sense that it is recognized that they were never in fact bound; if the marriage is valid and is declared such, it is ascertained that the spouses have celebrated a marriage which binds them for their whole life and has conferred on them the specific grace to fulfill their destiny in their union, established in full responsibility and freedom.

Marriage, one and indissoluble, as a human reality is not something mechanical and static. Its success depends on the

free cooperation of the spouses with the grace of God, on their response to his plan of love. If, owing to lack of cooperation with this divine grace, the union had remained deprived of its fruits, the spouses can and must bring back the grace of God, which the sacrament has ensured them, and renew their commitment to live a love, which is one not only of affections and emotions, but also and above all, of dedication—mutual, free, voluntary, total, and irrevocable.

This is the contribution that is asked of you judges in the service of that human and supernatural reality, so important, but also so menaced today, the family.

I pray for you that Jesus Christ, the Sun of Truth and Justice, may always be with you, so that the decisions of your tribunal will always reflect that higher justice and truth which proceeds from you. This is the heartfelt wish that I make for you at the opening of the new judicial year, and I accompany it with my apostolic blessing.

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