THE RELATIONSHIP BETWEEN FAITH AND THE VALIDITY OF THE NATURAL MARRIAGE

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One of the most frequent questions that the Metropolitan Tribunal receives from Catholics, Baptized non-Catholics, and unbaptized may be summarized as:

Why do baptized non-Catholics who do not share the same understanding of the sacramentality of marriage, and even non-baptized who have no faith in Jesus Christ, have to undergo a declaration of nullity process as a Catholic would?

Underlying this question, there is a deeper misconception of what a declaration of nullity signifies, and at the same time one finds a more basic misconception that the declaration of nullity deals only with the sacramental marriage and therefore the level of faith of the parties. In other words, what lies beneath this initial question is a more fundamental issue, i.e., the relationship between three dimensions of a sacramental marriage: a) Faith, b) Sacramentality of marriage c) and the validity of marriage.
The first point is easy to clarify. The Church always looks at the validity of the natural marriage between a man and a woman, which, in virtue of a valid baptism (catholic or not) of the two parties, it is raised to the level of being a sacrament. In other words, what makes marriage a sacrament is the ontological reality of the parties being validly baptized and not the level of faith or commitment to the faith of the parties involved. This assertion deserves more attention and reflection, and it should constitute a topic worthy of further discussion, which, at this point, escapes the scope of this article. However, it is important to at least consider what the last three Popes have delineated on the crucial subject of the relationship between faith and the validity of marriage.

In reading some of the *Allocutiones* to the Roman Rota of the last three Popes, it is possible to trace a red thread that delves in the direction of clarifying the relationship between the role of faith and the validity of the natural marriage.

St. John Paul II clearly states, reaffirming the fundamental aspect of marriage as a natural institution, that

> “an attitude on the part of those getting married that does not take into account the supernatural dimension of marriage can render it null and void only if it undermines its validity on the natural level on which the sacramental sign itself takes place” (John Paul II, Address to the Tribunal of the Roman Rota, 30 January 2003).

Benedict XVI takes this statement of John Paul II and tries to offer a more anthropological and theological reflection in these terms:

> “Contemporary culture, marked by accentuated subjectivism and ethical and religious relativism, places the person and the family before pressing challenges. Firstly, it is faced with the question about the capacity of the human being to bind him or herself, and about whether a bond that lasts a lifetime really is possible and corresponds with human nature or whether, rather, it contradicts man’s freedom and self-fulfillment. In fact, the very idea that a person fulfills him or herself living an “autonomous” existence and only entering into a relationship with the other when it can be broken off at any time forms part of a widespread mindset (cf. Discourse to the Roman Curia, 21 December 2012).

Pope Benedict in other words shifts the discourse to a deeper theological level where he is able to affirm that the rejection of the divine order must, somehow, also have an effect in the natural order, to the point of even disrupting the natural capacity of a person to establish the marital bond. He, in fact, adds:
It escapes no one that the basic decision of each person to enter into a lifetime bond, influences the basic view of each one according to whether or not he or she is anchored to a merely human level or is open to the light of faith in the Lord. It is only in opening oneself to God’s truth, in fact, that it is possible to understand and achieve in the concrete reality of both conjugal and family life the truth of men and women as his children, regenerated by Baptism [...] the rejection of the divine proposal, in fact, leads to a profound imbalance in all human relations (cf. Discourse to the International Theological Commission, 7 December 2012), including matrimonial relations, and facilitates an erroneous understanding of liberty and of self-fulfillment which, together with flight from the patient tolerance of suffering, condemns people to withdraw into selfish egocentricity.

The Pope, therefore, argues that the acceptance of faith “makes the person capable of self-giving” and thus being able to disclose all the dimensions of his humanity (Cf. Allocutio to the Roman Curia, 21 December 2012).

Recently, Pope Francis, in two occasions, has returned to this subject. I believe that the Allocutio he gave in 2015 sets the right context to address this issue. He states:

“Effectively, abandoning a perspective of faith gives rise to a false understanding of marriage, and this is not without consequence in the maturation of an individual’s will for marriage” [...] The judge is called to undertake judicial review when there is doubt regarding the validity of a marriage so as to ascertain whether there is something defective at the origin of the consent — both directly as a defect of valid intention, as well as by a grave deficit in the understanding of marriage itself to such an extent that this is what dictates one’s will (cf. can. 1099). Indeed, at the root of the crisis of marriage is often a crisis of knowledge enlightened by faith — that is, knowledge informed by the adhesion to God and his design of love realized in Jesus Christ.

He then adds that the lack of faith in people inevitably leads to the pursuit of personal well-being instead of the good of the other leaving the door open for compromises with one’s egoism and the pressures of the current mentality. For this reason:

the judge, in deliberating the validity of expressed consent, must keep in mind the context of value and faith — or the absence or lack thereof — in which the intention to marry is formed. Indeed, the lack of knowledge of the contents of the faith might lead to what the Code calls determinant error of the will (cf. can. 1099). This circumstance can no longer be considered exceptional as in the past, given the frequent prevalence of worldly thinking imposed on the magisterium of the Church. Such error threatens not only the stability of marriage, its exclusivity and fruitfulness, but also the ordering of marriage to the
good of the other. It threatens the conjugal love that is the “vital principle” of consent, the mutual giving in order to build a lifetime of consortium.

It seems to me that in the above statement Pope Francis is translating what Pope Benedict left at the level of a theological reflection to more canonical/juridical terms. Indeed, Pope Francis now takes what Pope Benedict referred to as “a profound imbalance in all human relations” and “an erroneous understanding of liberty and of self-fulfillment which, together with flight from the patient tolerance of suffering, condemns people to withdraw into selfish egocentricity”, and connects this reality to can. 1099 which reads: “Error concerning the unity or indissolubility or sacramental dignity of marriage does not vitiate matrimonial consent provided that it does not determine the will.” In other words, Pope Francis want to help canonists, and theologians at large, to explore the implications that the rejection of the divine order causes to the natural one, thus affecting the capacity of our human intellect to understand the reality of marriage and therefore to almost determining the will to consent only to this erroneous reality. In Evangelii gaudium, Pope Francis affirms:

“Marriage now tends to be viewed as a form of mere emotional satisfaction that can be constructed in any way or modified at will” (Ap. Ex. Evangelii gaudium, n. 66). This pushes married persons into a kind of mental reservation regarding the very permanence of their union, its exclusivity, which is undermined whenever the loved one no longer sees his or her own expectations of emotional well-being fulfilled.

In light of these considerations, I believe that the last three Popes are asking us, Juridical and Canonical Operators, at the service of the Truth and Justice, to more closely evaluate the life of faith of the persons that come to us and to consider whether at the time of the wedding they were implicitly (by way of life) and/or explicitly (by formal declaration) rejecting the Divine Order and to ponder to what extent this rejection may have affected their understanding of marriage even to the point that they willed that erroneous reality, which is other than marriage.

However, as it is the case for every judge who has to apply his practical judgment to every situation, to judge the faith of a person is hard, if not impossible, but to evaluate whether a person is guided by an erroneous understanding of the natural order of things, and therefore of marriage, is something that can be done and ought to be explored, especially when we are living during an epochal change in the very understanding of the basic foundational elements of what it means to be a person in relation to the other and above all to God.
CHANGES IN THE JUDICIAL PROCEDURES

In light of the procedural amendments to the Ordinary Formal Process introduced in *Mitis Iudex*, we are implementing changes that will take effect by June 1st. These changes will affect only the initial stages of the Process.

These changes will adapt our praxis to the new law set forth by the Holy Father in his *Muto Proprio*. It will also reduce the amount of time in the initial stage moving the case expeditiously towards instruction helping the tribunal to carry out the work of truth and Justice in the Church.

One of the main changes, is that the *libellus* will be sent to the respondent at citation. Once the *libellus* is received, if the Judicial Vicar resolves that there is a basis for accepting the case, he immediately orders that the Defender of the Bond and the Respondent be notified and sent a copy of the *libellus*, unless it was originally signed by both parties.

Once fifteen days have elapsed since notifying the respondent and the Defender of the Bond, the Judicial Vicar must issue a decree establishing the “formula of doubt/grounds” and with the same decree establish whether the case is to be directed according to the Ordinary or the Abbreviated Process. In addition, this judicial decree also orders that a panel of judges be constituted (New Can. 1676 § 3), eliminating the previous need of a separate decree to that effect.

Once the parties are notified of the grounds that will be investigated and the constitution of the court, they have a period of ten days within which, they can provide any objections, if no objections are received within ten days, the case will move to instruction and the witnesses will be cited. It is very important that the parties notify the witness and are assured that they will participate before providing their names in the witness list.
The second change which has already been implemented is to provide a payment agreement with the initial “Formal Libellus Packet.” This agreement is to indicate if the Petitioner would like to make monthly payments, pay in full, request a waiver or make other arrangements. This form is required for our files regardless if a waiver is granted or the method of payment. Sending it out with the initial packet assures that there will not be any delays further along in the process.

MEET THE DEFENDER OF THE MATRIMONIAL BOND

Sister Francisca Igweilo, O.P., JCL, made her first religious profession in the Dominican Order over 26 years ago. She was born and raised in Sokoto, Northwestern Nigeria.

She served the Dominican Order both at the local and international levels. Sister holds a JCL from St. Paul University, Ottawa, Canada. She also holds a master’s degree in canon law from the University of Ottawa, Canada and a master’s degree in Theology from Aquinas Institute of Theology in St. Louis, Missouri. She joined the Metropolitan Tribunal in 2013 and currently serves as the Defender of the Bond. She is also very active at her home parish of St. Louis in Englewood and enjoys singing praises to God for his goodness.
The Defender of the Bond is a canon lawyer who is duty-bound, in each marriage nullity case, to propose any reasonable evidence or arguments that can be brought forth against the nullity or dissolution of the marriage. She has the right to appeal cases in which the nullity of marriage is not proven sufficiently.

**COMMON LAW MARRIAGE AND LACK OF FORM**

A baptized Catholic who wants to celebrate the sacrament of marriage in the Catholic Church and was previously in a common law marriage needs a Declaration of Nullity through the Lack of Form Process. A common law marriage is a legally recognized marriage between two people who have not purchased a marriage license or had their marriage solemnized by a ceremony. Not all states have statutes addressing common law marriage. In some states case law and public policy determine validity. For a marriage to be viewed as common law in Colorado the following must apply: The parties must both be over 18 years of age; they must have agreed that they are husband and wife; the parties must cohabit as husband and wife after agreeing among themselves that they are husband and wife; and they must hold themselves out to the public at large as husband and wife. Common law marriage is allowed in a minority of states. They are: Colorado, Iowa, Kansas, Montana, New Hampshire, South Carolina, Texas, and Utah.
“The ability of human couples to beget life is the path along which the history of salvation progresses. Seen this way, the couple’s fruitful relationship becomes an image for understanding and describing the mystery of God himself, for in the Christian vision of the Trinity, God is contemplated as Father, Son and Spirit of love. The triune God is a communion of love, and the family is its living reflection. Saint John Paul II shed light on this when he said, “Our God in his deepest mystery is not solitude, but a family, for he has within himself fatherhood, sonship and the essence of the family, which is love. That love, in the divine family, is the Holy Spirit”. The family is thus not unrelated to God’s very being. This Trinitarian dimension finds expression in the theology of Saint Paul, who relates the couple to the “mystery” of the union of Christ and the Church (cf. Eph 5:21-33).”

Pope Francis