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The Duty to Love for the Truth. On the *signum specificum* of Benedict XVI's Judicial Petrine Ministry

Abstract: When Pope Benedict XVI crowned with allocution the ministry of Shepherd and Judge in 2013, the final memento so close to his heart, he referred to those who “saveguard truth and justice” — and he did it in a general way, without personal emphasis (somewhat understandably). Only Pope Francis was able, in his first address to the Roman Rota, to show implicitly the genius of his Predecessor’s judicial ministry as *Cooperator Veritatis*. These circumstances gave rise to a scholarly reflection on the magisterial output of Pope Joseph Ratzinger in question. The primary source giving a comprehensive (and essentially complete) insight into Benedict XVI’s idea of exercising the office of the Church’s supreme judge is a collection of addresses to the Roman Rota from 2006 to 2013. It is in this collection that the very core of the ecclesial ministry at the service of justice can be successfully identified — the ministry whose nature is well reflected by the combination of the formulas: *pastor bonus* and *iustus iudex* — according to the personalistic paradigm: in the Church justice and the administration of justice are animated by love (*caritas*). A methodical study of segments of this original doctrine — through the prism of the principle of *sentire cum Ecclesia* and the accompanying postulate of harmonization *vetera et nova* — made it possible to accomplish the research task outlined in the title, namely, an attempt to identify the *signum specificum* of Benedict XVI’s judicial Petrine ministry.

Keywords: Benedict XVI, addresses to the Roman Rota, process of the nullity of marriage, judicial *diaconia*, service to truth in justice, pastoral sensitivity, unity in the application of laws

Introduction:

Cooperator Veritatis – Benedict XVI’s Original Implementation of the Shepherd-judge Ministry

The members of the Church’s judiciary will certainly remember the recent Rotal allocution delivered at the inauguration of the judicial year 2024 as a speech in which Pope Francis made an important synthesis of the special magisterium addressed to this particular group by his predecessor on the See of Peter, the great Co-worker of Truth (*Cooperator Veritatis*)¹, Benedict XVI. Disclosed not explicitly, the current Holy Father’s intention is already given away by the nodal idea of the speech in question, proclaimed with the sentence: “The discernment of the judge requires two great virtues: prudence and justice, which must be informed by charity.”² After all, it is difficult not to connect this idea (*nota bene* minted in the title of the allocution: “Giudicare con prudenza e giustizia...”) from the original edition of *L’Osservatore Romano*³ to the leading theme of Benedict XVI’s famous⁴ 2007 “Address to the Roman Rota”: “the love of truth emerges as a point of convergence between processual research and the pastoral service of the person.”⁵ Suffice it to recall the context of another statement by Francis: “The law and judgement are always at the service of truth, justice

¹ Joseph Ratzinger, a humanist thinker and theologian, always understood his ministry of a bishop and pope as a service to the truth, as highlighted by the motto of the pontificate: “*Cooperatores Veritatis*.” See *Cooperatores Veritatis. Scritti in onore del Papa emerito Benedetto XVI per il 90° compleanno – Tributes to Pope Emeritus Benedict XVI on his 90th Birthday*, ed. Pierluca Azzaro and Federico Lombardi (Città del Vaticano: LEV, 2017).

² Francis, “Address to the Officials of the Tribunal of the Roman Rota for the Inauguration of the Judicial Year (January 25, 2024).”

³ Francesco, “Giudicare con prudenza e giustizia liberi da ogni pregiudizio. Discorso al Tribunale della Rota Romana in occasione dell’inaugurazione dell’anno giudiziario,” *L’Osservatore Romano*, 25 gennaio 2024.

⁴ “Il «servizio alla verità nella giustizia» di cui parla papa Benedetto XVI nel *Discorso alla Rota romana* [del 2007 – A.P.] è tutt’altro che una lode gratuita agli operatori del diritto o una manifestazione retorica di una dottrina ecclesiastica. In quel *servizio* [...] nel difendere e promuovere la comprensione della verità del matrimonio con la sua natura giuridica intrinseca, si gioca, nel presente frangente storico, un elemento di civiltà.” Fernando Puig, “Sulla verità e l’intrinseca natura giuridica del matrimonio,” *Ius Ecclesiae* 19 (2007): 494. Cf. Ombretta Fumagalli Carulli, “Verità e giustizia nella giurisprudenza ecclesiale,” *Ius Ecclesiae* 20 (2008): 476–477; Andrzej Pastwa, “Pillars of the System of *ius matrimoniale canonicum* According to Remigiusz Sobański,” in “*Nomos – Ethos – Oikonomia*.” *In Memory of Professor Remigiusz Sobański*, ed. Andrzej Pastwa, *Philosophy and Canon Law* 8, no. 2, (2022): 7–26.

⁵ Benedict XVI, “Address to the Members of the Tribunal of the Roman Rota (January 27, 2007).”

and the evangelical virtue of charity”⁶ – with the added (in the ideological setting of the synodality of procedures *in processu matrimoniali*) words of explanation: “the administration of justice in the Church is a manifestation of the care of souls, which requires pastoral solicitude in order to be servants of salvific truth and mercy.”⁷

At this point it is already worth asking what specific standards does the official requirement to respect the truth in undertaking acts of Church administration of justice carry? Is it sufficient today to confront the deontology and pragmatics of the judge’s service only with the dimension of the “ratio” and “telos” – in classical⁸ approaches such as: “the search for truth constitutes the directive principle of the process for assessing the nullity of marriage”⁹. Does the special magisterium of the post-conciliar popes not provide new impulses to open wide the horizon of perception of the service in question to the spirit of authentic personalism,¹⁰ and thus definitively cease to perceive the judicial office in a narrow, formalistic framework,¹¹ ignoring the obvious truth: *dietro ogni pratica, [...] ogni causa, ci sono persone che attendono giustizia*¹²?

The magnificent magisterial output of Pope Joseph Ratzinger gives every reason to believe that focusing the reflection in this study on selected elements of *iuris doctrina Benedicti* will make it possible to answer these and other questions. In turn, a methodical search of these elements – through the prism of the principle of *sentire cum Ecclesia* and the accompanying postulate of harmonization *vetera et nova*¹³ – will make it possible to accomplish the research task outlined in the title, namely an attempt to identify the *signum specificum* of Benedict XVI’s judicial Petrine ministry.

⁶ Francis, “Address to the Officials of the Tribunal of the Roman Rota for the Inauguration of the Judicial Year (January 27, 2022).”

⁷ Francis, “Address to the Officials of the Tribunal of the Roman Rota for the Inauguration of the Judicial Year (January 27, 2022).”

⁸ Remigiusz Sobański, “Prawda jako entelechia procesu o nieważność małżeństwa w świetle przemówień Piusa XII do Roty Rzymskiej,” *Ius Matrimoniale* 13 (2008): 29–41.

⁹ Carlos M. Morán Bustos, “La ricerca della verità, ‘ratio’ e ‘telos’ del processo canonico di nullità del matrimonio,” *Ius Ecclesiae* 33 (2007): 467 [Abstract].

¹⁰ Giovanni Paolo II, “Discorso ai Membri del Tribunale della Sacra Romana Rota (26 febbraio 1983).”

¹¹ The aforementioned Prof. Carlos M. Morán Bustos, the Dean of the Spanish Rota – not inclined to hide his source of inspiration – skillfully completes his interesting discourse: “[...] ‘amore alla verità’ è la caratteristica di tutto l’impegno forense del giudice canonico, è il criterio ispiratore della deontologia del giudice,” 476.

¹² Francesco, “Discorso al Tribunale della Rota Romana per l’inaugurazione dell’anno giudiziario (24 gennaio 2014).” *Nota bene* the pronunciation of the Pope’s words in the Italian original of the address, unlike those in the English edition, underscores the personocentric core of the Pope’s thought.

¹³ Benedict XVI, “Address for the Inauguration of the Judicial Year of the Tribunal of the Roman Rota (January 21, 2012).” See Antoni Stankiewicz, “*Sentire cum Ecclesia* e l’interpretazione della legge canonica,” *Periodica de re canonica* 102 (2013): 379–402.

In order to fully satisfy the requirements of the methodology and methodics of scientific study, it is appropriate to point out that the primary source giving a comprehensive (and essentially complete) insight into Benedict XVI's idea of exercising the office of Church's supreme judge is a collection of addresses to the Roman Rota from 2006 to 2013. It is in this collection that the very core of the ecclesial ministry at the service of justice can be successfully identified, a ministry, the nature of which is well reflected by the combination of the formulas: *pastor bonus* and *iustus iudex* – according to the personalistic paradigm: in the Church justice and the administration of justice are animated by love (*caritas*).¹⁴

Here it seems appropriate to go back to January 2006, ten months after Joseph Ratzinger–Benedict XVI took the helm of the Peter's boat. A series of events and meetings with the newly elected Pope are still underway according to the general calendar of papal audiences. January in that calendar is traditionally the time of the expected audience for judges and staff of the apostolic Tribunal of the Roman Rota, with an address¹⁵ to all members of the Church judiciary.

A speech such as this one: inaugural – in the double sense,¹⁶ used to be called programmatic, especially when it meets two conditions. The first condition is to refer to the established ideas and achievements of the thought of the predecessor in the office of the Bishop of Rome, in the broad spectrum of the activity of the shepherd-legislator-judge. The second condition – is to outline the author's (!) ideological perspective of serving the office in question.

Indeed, it is the fulfillment of these criteria that determines the uniqueness of the 2006 Rotal allocution, which should be regarded as one of Benedict XVI's programmatic¹⁷ speeches.¹⁸ In the substantive layer of the allocution, attention is

¹⁴ John Paul II, "Address to the Prelate Auditors, Officials and Advocates of the Tribunal of the Roman Rota (January 18, 1990)." See Andrzej Pastwa, "Przymierze miłości małżeńskiej." *Jana Pawła II idea małżeństwa kanonicznego* (Katowice: Wydawnictwo Uniwersytetu Śląskiego, 2009): 205–208.

¹⁵ Benedict XVI, "Address to the Members of the Tribunal of the Roman Rota (January 28, 2006)."

¹⁶ It is about an event inaugurating simultaneously: the apostolic ministry of the new shepherd (legislator and judge) of the universal Church and (customarily) another year of judicial work.

¹⁷ The programmatic idea of Benedict XVI's first speech has been aptly expressed by Joaquín Llobell in the chapter titles of his study in the journal *Ius Ecclesiae*: (1) *Nuove considerazioni assiologiche sul diritto e sul dovere al processo giudiziale ispirate dal magistero di Benedetto XVI circa la necessità di "agire secondo ragione" nell'attività ecclesiale*; (2) *Lecclesialità del processo giudiziale secondo l'impostazione della legge come "ordinatio rationis" e il positivo influsso dell'illuminismo giusnaturalista per il "ricupero" in ambito canonico di qualche elemento essenziale del diritto al giusto processo*; (3) *Lequilibrio fra la tutela dei diritti della comunità e del singolo: il diritto-dovere dei sacri pastori al giusto processo*. Joaquín Llobell, "Il diritto e il dovere al processo giudiziale nella Chiesa. Note sul magistero di Benedetto XVI circa la necessità di 'agire secondo ragione' nella riflessione ecclesiale," *Ius Ecclesiae* 19 (2007): 55–75.

¹⁸ Massimo del Pozzo, "Nella verità, la giustizia. Considerazioni a margine della prima Allocuzione benedettina alla Rota," *Ius Ecclesiae* 18 (2006): 503–523.

drawn, not only to the respectful emphasis on John Paul II's magnificent legacy in the field of canon law – with the crowning work being the *Instruction "Dignitas connubii"*, but above all to the reference to the two famous rotal addresses: perhaps the most important (as can be judged by the number of quotations and commentaries) from 1990¹⁹ and the most recent from 2005.²⁰ Both are united by the falsification of the thesis of the contradiction between law and pastoral care.²¹ Significantly, the development of this topic in the keynote address in question deserves special attention. Pope Benedict, stressing the exceptional timeliness of his Predecessor's ideas, explicitly states that in his first speech inaugurating a year of judicial work, he wishes to focus attention on what constitutes the fundamental meeting point between canon law and pastoral ministry, namely on love for the truth.²²

These circumstances alone sufficiently explain the decision to borrow – in the first part of the title of this study – the words of Benedict XVI, as a warp and starting point, in order to attempt identification of the *signum specificum* – from the second part of the title. It is precisely the title context thus designed that prepares the ground to seek confirmation of the hypothesis of Benedict XVI's original realization of the aforementioned paradigm of pastoral-judicial ministry: in the Church justice and the administration of justice are animated by love (*caritas*).

Obviously, the adopted framework of the study will not allow to address all²³ the detailed issues/questions that can be expected to be answered. The most important ones are as follows: what are the implications of adopting such a profiled optics of love/respect for truth in ecclesiastical procedural law? Does the perspective of love (*caritas*) create the conditions for a better resolution of potential problems

¹⁹ John Paul II, "Address to the Prelate Auditors, Officials and Advocates of the Tribunal of the Roman Rota (January 18, 1990)."

²⁰ "Address to Members of the Tribunal of the Roman Rota (January 29, 2005)."

²¹ Andrzej Pastwa, "L'alleanza sistemica del diritto e della pastorale. Osservazioni sull'arte dell'applicazione del diritto nell'intera preparazione canonica alla celebrazione del matrimonio," *Annuario Iuris Canonici* 2 (2015): 75–93; see also Eduardo Baura, "Pastorale e diritto nella Chiesa." In *Vent'anni di esperienza canonica: 1983–2003: Atti della Giornata Accademica tenutasi nel 20. anniversario della promulgazione del Codice di diritto canonico* (Città del Vaticano: LEV, 2003): 159–180.

²² "Fin dalla sua prima allocuzione alla Rota Romana, Benedetto XVI ha trattato dell'amore per la verità come del «fondamentale punto di incontro tra diritto e pastorale» per cui il processo canonico per il riconoscimento della eventuale nullità di un matrimonio ha un «valore pastorale, che non può essere separato dall'amore alla verità»." Paolo Bianchi, "Il servizio alla verità nel processo matrimoniale," *Ius canonicum* 57 (2017): 92.

²³ For example, a broad insight into the legal doctrine of Pope Benedict XVI is offered in the monograph by Massimo del Pozzo, *Il magistero di Benedetto XVI ai giuristi* (Città del Vaticano: LEV, 2013).

of administration of justice, such as that arising from the tension between the good of the community (*bonum commune*) and the good of the individual (*bonum personae*). Finally, in what sense does this judicial *diaconia* – in truth and love – define any ministerial service of judicial inquiry into the truth about marriage and its declaration in *de nullitate matrimony* cases?

Love for the Truth and Pastoral Sensitivity

“It is necessary to encourage in all sectors, and in a particular way in the field of marriage and of the family, a positive dynamic, sign of profound harmony between the pastoral and the juridical.”²⁴ These words of Benedict XVI, which constitute the essence of the important 2011 “Address to the Roman Rota”, certainly did not surprise any of the members of this august body. Needless to say, the aforementioned representatives of the Church judiciary, without difficulty, discovered the ideological ‘thread’ connecting this important enunciation with the contents of the aforementioned first rotal address of Pope Ratzinger. All the more so since there was no lack of explicit reference on the part of the Holy Father himself to the audience five years before.²⁵ What is also noteworthy, the Pope, recalling the context of the legal adagium *salus animarum suprema lex*,²⁶ did not fail to mention the famous “Address to the Roman Rota” of 1990, especially the passages deconstructing the harmful stereotype of dichotomizing what is legal with what is pastoral. “It is not true, John Paul II said at the time, that to be more pastoral, the law should become less juridical.”²⁷

With such a credo, Benedict XVI took up at the threshold of his pontificate – the challenge that comes with the office of the Church’s supreme legislator and judge.²⁸ In the Pope’s opinion, the aforementioned field of marriage and of the family

²⁴ Benedict XVI, “Address on the Occasion of the Inauguration of the Judicial Year of the Tribunal of the Roman Rota (January 22, 2011).”

²⁵ “At my first meeting with you in 2006 I tried to highlight the authentic pastoral meaning of causes of the nullity of marriage founded on love for the truth (*cf.* “Address to the Roman Rota (28 January 2006).”) 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 seek to shed light on the connection between this work and the judicial matrimonial process.”

²⁶ Cf. CIC/1983, can. 1752.

²⁷ John Paul II, “Address to the Prelate Auditors, Officials and Advocates of the Tribunal of the Roman Rota (January 18, 1990).”

²⁸ Benedict XVI, “Address to the Members of the Tribunal of the Roman Rota (January 28, 2006).”

(and we are talking about “one of the most precious of human values”²⁹) is a sensitive³⁰ area that by all means calls for the careful building of a bridge between love for the truth and pastoral sensitivity. It is not without reason that the Italian edition of *L'Osservatore Romano* introduced this significant phrase (“Amore per la verità e sensibilità pastorale”) to address the last – let us add, crucial in the context of the study – part of the 2006 allocution.³¹

As a kind of introduction to the exposition of the programmatic thought of Benedict XVI-Judge, we should consider his earlier words reminding us that the canonical proceedings for the nullity of marriage are in its essential structure, an institution serving justice and peace, and directly – a means of ascertaining the truth about the conjugal bond. Moreover, if we recall Pope John Paul II's 2005 teaching on the fundamental relationship that the process has with the search for objective truth and the special responsibility of bishops (since they are by divine law judges in their own communities, and on their behalf the tribunals administer justice)³² – it becomes clear that matrimony is not a commodity that spouses can dispose of. This is why Pope Benedict insists that under no circumstance can any kind of self-declaration replace canonical proceedings – first, because of the twofold natural and sacramental dimension of marriage, and second, because of its social and public nature.³³ The Pope's thought culminates in the following statement: “Here, the parties are not contending for some possession that must be attributed to one or the other. The trial's aim is [...] to declare the truth about the validity or invalidity of an actual marriage, in other words, about a reality that establishes the institution of the family and deeply concerns the Church and civil society. Consequently, it can be said that in this type of trial the Church herself is the one to whom the request for the declaration is addressed.”³⁴

²⁹ John Paul II, *Apostolic Exhortation 'Familiaris consortio'* (November 22, 1981).” See Wojciech Góralski and Andrzej Pastwa, *Rodzina suwerenna – Kościół domowy. W nurcie współczesnej myśli prawnej Kościoła powszechnego i Kościoła w Polsce* (Katowice: Wydawnictwo Uniwersytetu Śląskiego, 2015): 7.

³⁰ “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.” Benedict XVI, *Apostolic Exhortation 'Sacramentum Caritatis'* (February 22, 2007). Cf. Francis, *Apostolic Exhortation 'Evangelii Gaudium'* (November 24, 2013).” See also Gerhard Ludwig Müller, *La speranza della famiglia* (Milano: Edizioni Ares, 2014): 31–33.

³¹ Benedetto XVI, “Allocuzione alla Rota Romana” (28 gennaio 2006). *L'Osservatore Romano*, 29 gennaio 2006, 5.

³² John Paul II, “Address to Members of the Tribunal of the Roman Rota (January 29, 2005).”

³³ Benedict XVI, “Address to the Members of the Tribunal of the Roman Rota (January 28, 2006).”

³⁴ Benedict XVI, “Address to the Members of the Tribunal of the Roman Rota (January 28, 2006).”

This important theme of the 2006 allocution (with the nodal phrase: the trial's aim is to declare the truth) served as an ideological leverage for the Pope to originally extend the horizon of *caritas* to the entire dynamic determined by the finality of ecclesiastical administration of justice. The aforementioned paradigm of pastoral-judicial ministry perfectly fits into this horizon. The key to the realization of this *diaconia* is the love of (and respect for) truth, that of substance and that of trial. The affirmation of truth in the former corresponds to an integral view of the person (in all the richness of sex-differentiated personal structure) in the dimension of self-giving in self-transcendence³⁵ – in the light of evangelical values, with consistent resistance to individualistic and utilitarian approaches. Here, too, is situated the task of faithful communication of the doctrinal truth of the sacrament and the great responsibility of the judge not to give away the doctrine when deciding upon the individual *causa matrimonii*. Finally, it is a matter of taking into account the educational value of jurisprudence through the reliable transmission (promotion) of the Church's concept of marriage.³⁶ In turn, the same reliably implemented *diaconia* on the procedural plane should verify itself, as the esteemed expert Paolo Bianchi rightly points out, especially in giving careful attention to the transparency of procedures, so as to make each stage of the proceedings and the final judgment fully understandable.³⁷

The present indications in this segment of the original 2006 papal lecture on the adequate realization of ecclesial ministry at the service of justice – in examining (in the canonical process) the validity of each particular marriage – is concluded. “Just as the dialectic of the proceedings leads us to understand the criterion of the search for the truth, so it can help us grasp the other aspect of the question: its pastoral value, which cannot be separated from love for the truth.”³⁸ The importance of this last *memento* cannot be overestimated, for it sheds light on an

³⁵ Cf. Pastwa, *Przymierze miłości małżeńskiej*, 32–41.

³⁶ Cf. Bianchi, “Il servizio alla verità,” 85–86.

³⁷ “Fare riferimento a questa dimensione non vuol dire necessariamente porsi su un piano inaccessibile alla comprensione dei fedeli o lontano dalla loro realtà esistenziale. Significa invece – anche avendo cura il più possibile di rendere comprensibili la procedura e le decisioni dei tribunali (perché gli eccessi di astrattezza sono pure possibili) – aiutare a collocare e a leggere le singole esperienze individuali nel quadro complessivo della comprensione cristiana della persona umana e del matrimonio, così come tutelate dall'ordinamento canonico. Una separazione radicale fra realtà (esperienza esistenziale) ed idea (i valori protetti dall'ordinamento) appare poco sostenibile: a meno che si voglia teorizzare che le regole non siano altro che le concrete esperienze esistenziali. Il che, peraltro, sarebbe a sua volta una idea, una affermazione teorica, un'opzione ideologica.” Bianchi, 87.

³⁸ Benedict XVI, “Address to the Members of the Tribunal of the Roman Rota (January 28, 2006).”

important parameter of the *diaconia* in question, namely the realization by judges and all those serving in ecclesiastical judicial proceedings of a “grave obligation” (as the Pope calls it), which is a duty of “pastoral sensitivity”: “However, the truth sought in processes of the nullity of marriage is not an abstract truth, cut off from the good of the people involved. It is a truth integrated in the human and Christian journey of every member of the faithful. [...] It is nonetheless a grave obligation to bring the Church’s institutional action in her tribunals ever closer to the faithful. [...] That same pastoral sensitivity to the real situations of individuals must nonetheless lead to safeguarding the truth and applying the norms prescribed to protect it during the trial.”³⁹

Thus, as a result of a systematic and in-depth discourse, the doctrinal message was given expression and the impact of Benedict XVI’s first Rotal allocution was amplified. This is attested to by the Pope himself when, in the subsequent years of creating the special magisterium in question,⁴⁰ he returns again and again to the main idea that can be associated with the *signum specificum* of Benedict VI’s judicial Petrine ministry. It is largely synthesized in the final proclamation of the 2006 allocution: “[...] love of the truth links the institution of canonical causes of the nullity of marriage with the authentic pastoral sense that must motivate these processes.”⁴¹

Next year (2007), in a similar audience for the Tribunal of the Roman Rota, Pope Ratzinger presents a brief and yet meaningful synthesis of an earlier lecture: “Last year, at my first meeting with you, I sought to explore ways to overcome the apparent antithesis between the institution of causes of the nullity of marriage and genuine pastoral concern. In this perspective, the love of truth emerges as a point of convergence between processual research and the pastoral service of the person.”⁴²

It is worth adding that the Pope – strongly attached to the paradigmatic idea of “harmonization” (central to the Council’s *aggiornamento*)⁴³ – closes this topic with a significant statement that sticks in the memory (because it continues to

³⁹ Benedict XVI, “Address to the Members of the Tribunal of the Roman Rota (January 28, 2006).”

⁴⁰ See Ombretta Fumagalli Carulli, “Le Allocuzioni di Benedetto XVI alla Rota Romana,” in *Iustitia et iudicium. Studi di diritto matrimoniale e processuale canonico in onore di Antoni Stankiewicz*, vol. 3, eds Janusz Kowal and Joaquín Llobell (Città del Vaticano: LEV, 2010): 1376–1381.

⁴¹ Benedict XVI, “Address to the Members of the Tribunal of the Roman Rota (January 28, 2006).”

⁴² Benedict XVI, “Address to the Members of the Tribunal of the Roman Rota (January 27, 2007).”

⁴³ See Ombretta Fumagalli Carulli, “Il Concilio Vaticano II e il matrimonio canonico: capacità e consenso nella convergenza tra pastorale e diritto,” *Jus* 60, no. 2 (2013): 211–229.

take the form of a warning and an appeal)⁴⁴: “in causes of the nullity of marriage, the legal truth presupposes the ‘truth of the marriage’ itself.”⁴⁵

Yet another very instructive illumination of the issue in question is brought by the 2010 Roman Rota allocution.⁴⁶ Pope Benedict extends an invitation to the members of the apostolic tribunal, right at the outset, to reflect in depth on the meaning/profile of the judicial *diaconia*: “Today I wish to reflect on the essential nucleus of your ministry, seeking to analyze its relationship with justice, charity and truth.”⁴⁷ In the last part of this allocution, as if to summarize the lecture of the supreme legislator and judge, important words are said: “Regarding truth, in my Addresses to this Apostolic Tribunal in 2006 and 2007, I stressed that it is possible to arrive at the truth on the essence of marriage and the reality of every personal situation that is submitted to the judgement of the tribunal, and also the truth of matrimonial processes (cf. *Dignitas Connubii*, artt. 65 §§ 1–2, 95 § 1, 167, 177, 178). Today I wish to emphasize that both justice and charity postulate love for truth and essentially entail searching for truth. In particular, charity makes the reference to truth even more exacting.”⁴⁸

⁴⁴ “Il Santo Padre non solo espresse la disapprovazione nei riguardi dei canonisti che introducevano clandestinamente il pensiero soggettivistico-positivistico nella matrimonialistica ecclesiastica (tra l'altro dell'amministrazione della giustizia) e che nel contempo apportavano, nell'ordine giuridico della Chiesa, il frutto avvelenato dell'ermeneutica della discontinuità e della rottura. Ma, cosa ancora più importante, il papa [...] autorizzò espressamente la logica dell'alleanza della collocazione dello *ius matrimoniale* sul fondamento antropologico autentico con ‘la via tradizionale della Chiesa nella comprensione della dimensione giuridica dell'unione coniugale’, confermando (principalmente per ragioni teologiche, che affondavano le radici nell'insegnamento di Cristo e nelle sue interpretazioni di san Paolo) la posizione centrale nel sistema dello *ius* menzionato dei segmenti sia antropologico-etici, sia etico-giuridici della lezione del vescovo di Ippona sui *bona matrimonii: proles, fides, sacramentum*.” Andrzej Pastwa, *Il bene dei coniugi. L'identificazione dell'elemento ad validitatem nella giurisprudenza della Rota Romana*, [Biblioteca Teologica, Sezione Canonistica, 7], Lugano–Siena: Eupress FTL–Edizioni Cantagalli, 2018, 127–128; cf. Puig, “Sulla verità, 490–491.

⁴⁵ Benedict XVI, “Address to the Members of the Tribunal of the Roman Rota (January 27, 2007).”

⁴⁶ Benedict XVI, “Address on the Occasion of the Inauguration of the Judicial Year of the Tribunal of the Roman Rota (January 29, 2010).” See a comment to this speech – Massimo del Pozzo, “Caritas in veritate, salva iustitia,” *Ius Ecclesiae* 22 (2010): 496–507.

⁴⁷ Benedict XVI, “Address on the Occasion of the Inauguration of the Judicial Year of the Tribunal of the Roman Rota (January 29, 2010).”

⁴⁸ Benedict XVI, “Address on the Occasion of the Inauguration of the Judicial Year of the Tribunal of the Roman Rota (January 29, 2010).” The commentator's remark proves absolutely accurate: “Il Santo Padre ha preso spunto insomma dal collegamento tra carità e verità per illuminare il ruolo degli amministratori della giustizia. [...] L'insegnamento benedettino non si limita a mettere in guardia contro una falsa ‘carità pseudopastorale’ e un'ingannevole ‘verità relativistica’, promuove ancora una volta la forza della ragione e la fermezza del giurista.” Pozzo, “Caritas in veritate,” 497.

Unity in the Interpretation and in the Application of Laws

The mastery of Benedict XVI's object discourse is most evident when the Pope raises the issue of the objectivity of judicial discernment⁴⁹ – with an “opening” indication behind which the authority of the Church's supreme legislator clearly stands: “in the hermeneutics of the law is it confirmed that the authentic horizon is that of the juridical truth to love, to seek out and to serve.”⁵⁰ It is no coincidence that Pope Francis, referring to the legacy of his Predecessor's thought, has implicitly identified the exploration concerning the theme of discernment of the judge as one of the main determinants of his contribution to the legal doctrine of ecclesiastical jurisprudence.⁵¹ After all, the objectivity of judicial discernment – or, as Benedict XVI puts it: “the objective assessment of the facts in the light of the Magisterium and the law of the Church”⁵² – is inherent in the whole dynamic of the process of *de nullitate matrimonii*, culminating in the achievement of moral certainty⁵³ regarding nullity, overcoming in the concrete case the presumption of validity.⁵⁴

⁴⁹ Prelude to a positive lecture on the implementation by the ecclesiastical judge of the authentic *ministerium veritatis*, i.e. to be servants of salvific truth and mercy, are words of caution: “In most recent times, some currents of thought have warned against an excessive attachment to the laws of the Church, starting with the Codes, judging them, as a case in point, to be a manifestation of Legalism. As a consequence, hermeneutical paths had been proposed which grant an approach more consonant with the theological foundations and goals, also pastoral, of the canonical norm, leading to a juridical creativity in which a singular situation would become the decisive factor to ascertain the authentic meaning of the legal precept in a concrete case. Mercy, Equity, the *Oikonomia* so dear to the Oriental Tradition, are some of the concepts invoked in such interpretative operations. It is immediately appropriate to note that this framework does not overcome the Positivism which it denounces, limiting itself to substituting it [Positivism] with another in which interpretive human work rises to the level of protagonist in establishing that which is juridical. It lacks the meaning of an objective law which one is to seek because it remains at the mercy of considerations which claim to be theological or pastoral, but in the end are exposed to the risk of arbitrariness.” Benedict XVI, “Address for the Inauguration of the Judicial Year of the Tribunal of the Roman Rota (January 21, 2012).”

⁵⁰ Benedict XVI, “Address for the Inauguration of the Judicial Year of the Tribunal of the Roman Rota (January 21, 2012).”

⁵¹ Francis, “Address to the Officials of the Tribunal of the Roman Rota for the Inauguration of the Judicial Year (January 25, 2024).”

⁵² Benedict XVI, “Address to the Members of the Tribunal of the Roman Rota (January 26, 2008).”

⁵³ See Zenon Grocholewski, “La certezza morale come chiave di lettura delle norme processuali,” in *Ius Ecclesiae* 9 (1997): 417–450; Joaquín Llobell, “La certezza morale nel processo canonico,” in *Il diritto ecclesiastico* 109, no. 1 (1998): 655–699.

⁵⁴ Francis, “Address to the Officials of the Tribunal of the Roman Rota for the Inauguration of the Judicial Year (January 25, 2024).”

An instructive papal statement resonates with this thought: “The only way to give a solid foundation to the jurisprudential task is to conceive of it as a true exercise of *prudentia iuris*. This prudence is quite the opposite of arbitrariness or relativism, for it permits events to reveal the presence or absence of the specific relationship of justice which marriage is, with its real human and saving meaning. Only in this way do jurisprudential maxims acquire their true value without becoming a compilation of abstract and repetitive rules, exposed to the risk of subjective or arbitrary interpretations.”⁵⁵

The current Pope gives expression to the momentousness of this segment of Benedict XVI’s magisterium when, in the 2024 Rotal allocution,⁵⁶ he quotes an extensive passage from his predecessor’s teaching. It is exposed by an invocation of the hermeneutical paradigm: *sentire cum Ecclesia*⁵⁷, and explicitly by noting the maxim initiating the quote in question: “It follows that the interpretation of canonical law must take place within the Church.”⁵⁸ Indeed, Benedict XVI’s discourse in question – with a model of ecclesial ministry at the service of justice “founded on love for the truth”⁵⁹ – reaches its crowning moment in raising the issue of “unity in the interpretation and in the application of laws.”⁶⁰ With the latter, the Pope ties the marking/affirmation of the importance of the special papal magisterium in addresses to the Roman Rota and to the exemplary character of rotal jurisprudence.⁶¹

Thus, in an important allocution on the occasion of the 100th anniversary of the jurisprudential activity of the Tribunal in question (2008),⁶² the following

⁵⁵ Benedict XVI, “Address to the Members of the Tribunal of the Roman Rota (January 26, 2008).”

⁵⁶ Francis, “Address to the Officials of the Tribunal of the Roman Rota for the Inauguration of the Judicial Year (January 25, 2024).”

⁵⁷ Cf. Stankiewicz, *Sentire cum Ecclesia*, 386–393. See also Eduardo Baura, “La realtà disciplinata quale criterio interpretativo giuridico della legge,” *Ius Ecclesiae* 24 (2012): 705–717.

⁵⁸ “It follows that the interpretation of canonical law must take place within the Church. This is not a matter of mere external circumstance, subject to the environs: it is a calling to the same humus of Canon Law and the reality regulated by it. *Sentire cum Ecclesia* takes on meaning also within the discipline, by reason of the doctrinal foundations that are always present and operative within the legal norms of the Church. In this manner, is also applied to Canon Law that hermeneutics of renewal in continuity of which I spoke in reference to the Second Vatican Council, so closely bound to the current canonical legislation.” Benedict XVI, “Address for the Inauguration of the Judicial Year of the Tribunal of the Roman Rota (January 21, 2012).”

⁵⁹ Benedict XVI, “Address to the Members of the Tribunal of the Roman Rota (January 28, 2006).”

⁶⁰ Benedict XVI, “Address for the Inauguration of the Judicial Year of the Tribunal of the Roman Rota (January 21, 2012).”

⁶¹ Cf. Pastwa, *Il bene dei coniugi*, 75–94.

⁶² Benedict XVI, “Address to the Members of the Tribunal of the Roman Rota (January 26, 2008).”

passage draws attention: “All rulings must always be based on the principles and common norms of justice. This requirement, common to any juridical order, has specific significance in the Church to the extent that the requirements of communion are at stake. This involves the protection of what is common to the universal Church, entrusted in a particular way to the Supreme Authority and to the bodies that participate *ad normam iuris* in its sacred authority.”⁶³

These words – also because of the uniqueness of the event (the aforementioned jubilee) – should be treated with all seriousness, especially due to the fact that they turn out to be a prelude to the development – in a further passage of the allocution – of a thought in which the title resonates: the duty to love/respect the truth. It is about the passage in which the Pope highlights the importance of annual addresses to the Roman Rota as an indispensable tool for the pursuit of truth⁶⁴ in marriage nullity trials: “The value of interventions of the Ecclesiastical Magisterium on matrimonial and juridical issues, including the Roman Pontiffs Discourses to the Roman Rota, should [...] be seen in this realistic perspective. They are a ready guide for the work of all Church tribunals, since they authoritatively teach the essential aspects of the reality of marriage.”⁶⁵

That this papal statement should not be taken as thrown in passing is well illustrated by the combination of the terms in the Pope’s statement: “guide” and “authority”, a combination that is highly accurate and certainly intentional. Is it not the task of the supreme ecclesiastical authority holding the Petrine office to secure, from the substantive and functional side, ways of interpreting/applying the law that are consistent with *mens legislatoris*⁶⁶ – i.e. with the will of the legislator pertaining to the sphere of “principals, fundamental decisions, essential ideas, values and higher goals?”⁶⁷ All this is done in order to serve the realization of *communio Ecclesiae*,⁶⁸ to meet the need for “hermeneutical unity.” It is precisely to create the elementary

⁶³ Benedict XVI, “Address to the Members of the Tribunal of the Roman Rota (January 26, 2008).” See Remigiusz Sobański, “La tutela del matrimonio nel diritto processuale canonico,” in “*Iustitia et iudicium.*” *Studi di diritto matrimoniale e processuale canonico in onore di Antoni Stankiewicz*, vol. 3, eds Janusz Kowal and Joaquín Llobell (Città del Vaticano: LEV, 2010): 1487–1504.

⁶⁴ Benedict XVI, “Address to the Members of the Tribunal of the Roman Rota (January 26, 2008).”; Antoni Stankiewicz, “L’unità della giurisprudenza e il ruolo della Rota Romana,” *Ius Ecclesiae* 22 (2010): 591–610.

⁶⁵ Benedict XVI, “Address to the Members of the Tribunal of the Roman Rota (January 26, 2008).”

⁶⁶ Cf. *Code of Canon Law* (promulgated: January 25, 1983), can. 17.

⁶⁷ Georg May, Anna Egler, *Einführung in die kirchenrechtliche Methode* (Regensburg: Pustet, 1986): 206.

⁶⁸ Remigiusz Sobański, “Zu den Interpretationsregeln des kirchlichen Gesetzbuches,” in “*Iustus Iudex.*” *Festgabe für Paul Wesemann zum 75. Geburtstag*, edited by Klaus Lüdicke, Heinz Mussinghoff and Hugo Schwendenwein (Essen: Ludgerus, 1990): 703–707.

conditions for achieving the latter,⁶⁹ and more specifically, to ensure the necessary coherence in the interpretation and application of the marriage canons in accordance with the principles of justice that the addresses to the Roman Rota⁷⁰ are intended to serve in the first place.

Thus, a clear answer to the question of why Benedict XVI, in his penultimate “Rotal Address (2012)”, so emphatically links to the judicial *diaconia* – updating the duty to love/respect the truth – “all juridically binding means which tend to ensure that unity in the interpretation and in the application of laws,”⁷¹ i.e. the means that serve hermeneutical unity. On this issue of such importance, it also remains to the credit of the aforementioned Pope that in as many as three⁷² addresses he has focused (not episodically, but incisively and systemically!) his Shepherd and Judge lecture on the importance of the jurisprudence of the Roman Rota. It, perhaps, resonates most strongly in the aforementioned 2011 allocution,⁷³ in which Benedict XVI gives expression to the ideological affinity of his teaching with the thought of his great Predecessor.⁷⁴

“Rotal jurisprudence should be seen as exemplary juridical wisdom carried out with the authority of the Tribunal permanently constituted by the Successor of Peter for the good of the whole Church.”⁷⁵ This directive, which is the final one to be quoted, explains more than clearly the servile and indispensable role of the jurisprudence of the Roman Rota in updating the idea of “hermeneutic unity.”⁷⁶ As a kind

⁶⁹ Relating the principle of “hermeneutical unity” to the work of the Church’s tribunals, Benedict XVI underscored its importance with a neat phrase: “[...] to practice in an exemplary manner, in the application of judicial and administrative institutes, communion in discipline, the essential aspect of the unity of the Church.” Benedict XVI, “Address for the Inauguration of the Judicial Year of the Tribunal of the Roman Rota (January 21, 2012).”

⁷⁰ Benedict XVI, “Address to the Members of the Tribunal of the Roman Rota (January 26, 2008).”

⁷¹ Benedict XVI, “Address for the Inauguration of the Judicial Year of the Tribunal of the Roman Rota (January 21, 2012).”

⁷² It is about Rotal allocutions of 2008, 2011 and 2012.

⁷³ Benedict XVI, “Address on the Occasion of the Inauguration of the Judicial Year of the Tribunal of the Roman Rota (January 22, 2011).”

⁷⁴ “All this requires that the work of ecclesiastical tribunals transmit a univocal message on what is essential in marriage, in harmony with the Magisterium and with canon law and speaking unanimously. Given the need for the unity of jurisprudence, entrusted to the care of this Tribunal, the other ecclesiastical tribunals must conform to the rotal jurisprudence.” Cf. John Paul II, “Address to the Tribunal of the Roman Rota (January 17, 1998).”

⁷⁵ Benedict XVI, “Address to the Members of the Tribunal of the Roman Rota (January 26, 2008).”

⁷⁶ “Benedetto XVI richiama in merito la sottolineatura della esemplarità della giurisprudenza rotale fatta da Giovanni Paolo II nel 1998, ma egli stesso, nella allocuzione del 2008, attirava l’attenzione sul valore di tale giurisprudenza e sulla necessità che essa sia sempre più unitaria. L’autorità morale e scientifica, nonché la forza argomentativa delle decisioni rotali, soprattutto laddove esse diano vita a una vera e propria giurisprudenza.” Paolo Bianchi, “«Non esiste [...] un matrimonio della vita e un

of buckle, it ties together the directive content present in the 2008 address: first, in recalling the rule that the tribunal of the Roman Rota “fosters unity of jurisprudence and, by virtue of its decisions, provides assistance to lower tribunals”⁷⁷ and, second, in the task (implied by this rule): “to make rotal jurisprudence more and more manifestly unitive as well as effectively accessible to all who exercise justice, in order to ensure its uniform application in all Church tribunals.”³⁹⁰ The same directive character has – in the final part of the papal lecture – an appeal to judicial prudence (*prudentia iuris*) to completely eliminate, or at least minimize, “a risk that ‘local forms of jurisprudence’ develop, *sensim sine sensu*, ever more distant from the common interpretation of positive law and also from the Church’s teaching on matrimony.”⁷⁸

* * *

When in 2013 Pope Benedict XVI crowned with allocution the ministry of Shepherd and Judge, the final memento so close to his heart, he referred to those who “save-guard truth and justice”⁷⁹ – and he did it in a general way, without personal emphasis (somewhat understandably). Only Pope Francis was able, in his first address to the Roman Rota,⁸⁰ to show implicitly the genius of his Predecessor’s judicial ministry as *Cooperator Veritatis*, brilliantly created in words and confirmed by personal testimony. The present Holy Father, recalling the same context: “a service to truth in justice”, describes the ministry in question as a true *diaconia*⁸¹, whose authenticity is expressed *par excellence* in “strengthening the full communion between individual members of the faithful, and between them and the ecclesial body.”⁸²

Following such a model, an ecclesiastical judge – “having a genuine spirit of service,” and thus understanding the duty to love for the truth – can and should

altro del diritto»: Lesigenza di una seria pastorale prematrimoniale e di una coerente prassi giudiziaria,” *Ius Ecclesiae* 23 (2011): 483.

⁷⁷ John Paul II, *Apostolic Constitution “Pastor Bonus”* (March 19, 2022), Art. 126; Francis, *Apostolic Constitution “Praedicate Evangelium”* (March 19, 2022), Art. 200 § 1.

⁷⁸ Benedict XVI, “Address to the Members of the Tribunal of the Roman Rota (January 26, 2008).”

⁷⁹ “Dear Brothers, I invoke God’s help upon you and upon all those in the Church who strive to safeguard truth and justice with regard to the sacred bond of marriage and, for this very reason, the Christian family,” Benedict XVI, “Address for the Inauguration of the Judicial Year of the Tribunal of the Roman Rota (January 26, 2013).”

⁸⁰ Francis, “Address to the Officials of the Tribunal of the Roman Rota for the Inauguration of the Judicial Year (January 24, 2014).”

⁸¹ Pastwa, *Przymierze miłości małżeńskiej*, 235–239.

⁸² Francis, “Address to the Officials of the Tribunal of the Roman Rota for the Inauguration of the Judicial Year (January 24, 2014).”

“treat and judge the condition of the faithful, who with confidence turn to him by imitating the Good Shepherd caring for the wounded lamb. That is why he must be inspired by pastoral charity – the charity which God poured into our hearts through ‘the Holy Spirit who has been given to us.’”⁸³

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Rev. Andrzej Pastwa

Le devoir d'aimer la vérité. Sur le signum specificum du ministère pétrinien judiciaire de Benoît XVI

Résumé

Lorsque le pape Benoît XVI a couronné par une allocution le ministère de berger et de juge en 2013, dernier souvenir qui lui tenait tant à cœur, il a fait référence à ceux qui « sauvegardent la vérité et la justice » – et il l'a fait de manière générale, sans insister sur les personnes (ce qui est assez compréhensible). Seul le pape François a été capable, dans son premier discours à la Rote romaine, de montrer implicitement le génie du ministère judiciaire de son prédécesseur en tant que *Cooperator Veritatis*. Ces circonstances ont donné lieu à une réflexion savante sur la production magistérielles du pape Joseph Ratzinger en question. La principale source donnant un aperçu complet (et essentiellement exhaustif) de la conception de Benoît XVI quant à l'exercice de la fonction de juge suprême de l'Église est un recueil de discours prononcés devant la Rote romaine entre 2006 et 2013. C'est dans ce recueil que l'on peut identifier avec succès le cœur même du ministère ecclésial au service de la justice – ministère dont la nature est bien reflétée par la combinaison des formules *pastor bonus* et *iustus iudex* – selon le paradigme personnaliste : dans l'Église, la justice et l'administration de la justice sont animées par l'amour (*caritas*). Une étude méthodique de certains segments de cette doctrine originale – à travers le prisme du principe *sentire cum Ecclesia* et du postulat d'harmonisation *vetera et nova* qui l'accompagne – a permis d'accomplir la tâche de recherche décrite dans le titre, à savoir tenter d'identifier le *signum specificum* du ministère pétrinien judiciaire de Benoît XVI.

Mots-clés : Benoît XVI, discours à la Rote romaine, procédure de nullité du mariage, diaconie judiciaire, service de la vérité dans la justice, sensibilité pastorale, unité dans l'application des lois

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Il dovere di amare per la verità. Sul signum specificum del ministero petrino giudiziario di Benedetto XVI

Sommario

Quando nel 2013 Papa Benedetto XVI ha coronato con un'allocuzione il ministero di Pastore e Giudice, l'ultimo ricordo così caro al suo cuore, ha fatto riferimento a coloro che « salvaguardano la verità e la giustizia » – e lo ha fatto in modo generico, senza enfasi personale (il che è in qualche modo comprensibile). Solo Papa Francesco è stato in grado, nel suo primo discorso alla Rota Romana, di mostrare implicitamente il genio del ministero giudiziario del suo predecessore come *Cooperator Veritatis*. Queste circostanze hanno dato origine a una riflessione accademica sulla produzione magisteriale di Papa Joseph Ratzinger in questione. La fonte primaria che fornisce una visione completa (e sostanzialmente esaustiva) dell'idea di Benedetto XVI sull'esercizio della funzione di giudice supremo della Chiesa è una raccolta di discorsi alla Rota Romana dal 2006 al 2013. È in questa raccolta che si può identificare con successo il nucleo stesso del ministero ecclesiale al servizio della giustizia – ministero

la cui natura è ben riflessa dalla combinazione delle formule: pastor bonus e iustus iudex – secondo il paradigma personalistico: nella Chiesa la giustizia e l'amministrazione della giustizia sono animate dall'amore (caritas). Uno studio metodico di segmenti di questa dottrina originale – attraverso il prisma del principio sentire cum Ecclesia e il postulato di armonizzazione vetera et nova che lo accompagna – ha permesso di portare a termine il compito di ricerca delineato nel titolo, ovvero il tentativo di identificare il signum specificum del ministero petrino giudiziario di Benedetto XVI.

Parole chiave: Benedetto XVI, discorsi alla Rota Romana, processo di nullità del matrimonio, diaconia giudiziaria, servizio alla verità nella giustizia, sensibilità pastorale, unità nell'applicazione delle leggi