The Jurisprudence of the Tribunal of Roman Rota as Precedents to the Local Church Tribunals

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Abstract
The Apostolic tribunals especially the tribune of the Roman Rota is charged with the unity of jurisprudence and the responsibility to oversee the proper administration of justice since the doctrine of judicial precedents do not exist within the canonical jurisprudence of the local Churches. As such the local Churches must look to the jurisprudence and praxis of the Roman Curia in supplying for an express prescription of law. In line with the above therefore, this paper has discussed the basic issues of the Roman Rota as it is endowed with the status of judicial precedents considered necessary to serve as a guide and orientation for the interpretation of law in the local Church tribunals.

Introduction

John Paul 11(1988) provided for the judicial competences of some tribunals of the dicasteries of the Roman Curia (e.g. Congregation for Doctrine of Faith on *graviora delicta*-art 53; Congregation for Divine Worship and Discipline of Sacraments, non-consummation-art 67 and nullity of ordination-art 68 etc.) differently from the de facto Apostolic Tribunals (i.e. The Apostolic Penitentiary-artt. 117-120; The Supreme Tribunal of the Apostolic Signatura-artt. 121-125 and The Tribunal of the Roman Rota-artt. 126-130). These dicasteries present different nuances of authority and

authenticity. For instance, there is no appeal against the judgement of the Supreme Tribunal of the Apostolic Signatura (can 1629, 1°) and the Congregation for Doctrine of faith in *graviora delicta* (grave delicts) cases. In the situation of *lacuna legis* (i.e. where there is no express provision of neither universal and particular laws, nor custom, and always in a particular matter that is not penal), the legislator allowed recourse for interpretation and solution to "the jurisprudence and practice of the Roman Curia.

This introduces the issue of the judicial value of the activities of Apostolic Tribunals especially the ordinary tribunal of the Roman Rota (cann 1443, 1444) charged with "the unity of jurisprudence and that of the Supreme Apostolic Tribunal that oversees the "proper administration of justice (Mendonca, 1992: 7). The legislator in this canon 19 affirms the interpretative value and principle of judicial precedents of especially the Roman Curia, but elsewhere in the Code disposes that:

- The sentences of Church tribunals have no force of law except for the parties in a particular matter (can 16, §3);
- Adjudged matter (can 1641) has the force of law and juridic effect for the parties (can 1642, §2);
- Recourses and appeals are allowed against the judgement of the lower tribunals and also that of the Tribunal of the Roman Rota (cann 1628; 1643; 1644; 1683; 1619-1627; 1732-1739; 1445, §1, 2°; 1614).

In these provisions we can say in a strict sense that doctrine of judicial precedents (*stare decisis*) do not exist within the canonical jurisprudence of the Church. Provost (1994) added:

> Because Church courts are not governed by the stare decisis system of the Anglo-American

> legal system, but rather must authoritatively interpret the law for each individual case in the light of the proper meaning of the words of the law considered in their text and context, and are to look to the jurisprudence and praxis of the Roman Curia, among other sources, in supplying for an express prescription of law, it is this doctrinal jurisprudence as reflected in various sentences to which the Rota itself turns to decide cases that are of most long-term value to local tribunals.(p. 257).

This signifies that judicial decisions do not enjoy the status of law or authentic interpretation (can 16, §2). Its juridic value and binding effect is only for the parties (cann 16, §3; 1642, §2), that is to say, as Doe (1994) puts it, when a matter calls for a former judicial resolution, however, the basic understanding is that a court is not bound by earlier judicial decisions on the same or a related matter, in order to dispose of the case at hand. For the judicial decisions of the Apostolic See, the interpretative value comes when they are designated as authentic interpreters like the Pontifical Council for Legislative Texts (can 16, §1; PB art. 154, 155); or acts with delegated legislative power to issue general decrees (cann 29; 30); or have their general executive decrees or Instructions approved *in forma specifica* (can 1405, §2). (Coriden, 1982). This draws from the fact that the legislator remain the authentic interpreter of laws and as John Paul II, remarked: "In a strict sense, the true authentic interpretation which declares the general meaning of the law for the entire community is reserved to the legislator, according to the well-known principle: 'The source of the law is the source also of interpretation' (*unde ius prodiit, interpretation quoque procedat*) (John Paul 11, 1984).

However, with regard to the jurisprudence of the tribunal of the Roman Rota, we experience circumstances that endow its jurisprudence with the status of judicial precedents even in a quasi level. as John Paul II (1984) indicated that although judges undoubtedly enjoy a freedom of decision (cann 16, §3; 1642, §2), nevertheless the jurisprudence of the Roman Rota and the practice of the Roman dicasteries are to be considered "guides and orientation for interpretation of the law in some cases. This is considered necessary in order to avoid jurisprudential laxity and arbitrary application of legislative dispositions, and specifically to enthrone the required jurisprudential unity (a unity that is not actually uniformity but harmony, respecting the liberty of judges [can. 16, §3], diversity of cultural contexts [can 17], and creative collaboration of all). In this context, John Paul II (1984) continued to say that while respecting a healthy pluralism that reflects the Church's universality, the function of the jurisprudence of the Rota is indeed that of leading toward more convergent unity and substantial uniformity in safeguarding the essential contents of canonical marriage, which the spouses, the ministers of the sacrament, celebrate in adherence to the depth and wealth of the mystery in reciprocal profession before God.

Finally, therefore, it is within these provisions of the Code (can 19) and the expression of the mind of the legislator (can 17), that we intend to discuss the issue of jurisprudence of the Roman Rota as precedents to the local Church tribunals.

The Juridical Status of the Tribunal of Roman Rota

The new Code and *Pastor Bonus* affirm the auxiliary and ministerial status of the Roman curia to the Supreme Pontiff, the Universal Church and the Particular Churches (PB 1; can 360). By this disposition, its competence is essentially vicarious (PB 8) that is "it acts not in its own right or by its own initiatives, but always in accord with the will of the pope

and in service to the good of the Church and service of the bishops (Provost, 1988).

Principally the curia operates according to the universal law (the 1983 Code) and special law (*Pastor Bonus* and *Regolamento* and ones particular to the individual dicasteries). The curia serves the finality of the Church which is the good of the Church especially the salvation of souls (PB 12, 15; can 1752). Principally from its title and focus, *diakonia* is the leitmotiv of *Pastor Bonus.* The fact that the curia draws its existence from the pastor of the universal Church (PB 7; Cf. can 331) and serves the whole Church (PB 12), makes it to have an ecclesial character (PB 7, 12). Hence by this disposition the curia serves not only the unity of discipline and unity of faith (PB11) for which the Pope, the College of Bishops and the diocesan bishops "are the visible source and foundation of unity in their own particular Churches but also communion (PB 12) and collegiality (PB 10) in the Church. Suffice it to say that the curia has been the subject of four pontifical texts: *Immensa aeterni Dei* (1588), *Sapienti consilio* (1909), *Regimini ecclesiae universae* (1967) (Jedin, 1957).

The Apostolic tribunal of the Roman Rota has a long history from the Apostolic Chancery to its definitive competence as the ordinary tribunal of the Apostolic See. In addition, as curial department (can 360), the Rota carries out its work in the service of the Apostolic See and judging in the name and with the authority of the Roman Pontiff. Significant interventions in the life of this tribunal were witnessed in the Pontificate of Innocent III, Innocent IV, John XXII (with unique special law through 1331 Constitution, *Ratio iuris*), Sixtus IV (1472, that mandated the 12 number of auditors), Benedict XIV (that definitively provided its clear competence with the 1747 Constitution, *Iustitiae et pacis*), Gregory XVI (1834, when Rota became also appeal tribunal for the

Pontifical State), Pius X (reconstituted the Tribunal with 29 June 1908 Constitution *Sapienti Consilio*, i.e. long after the 1870 predicaments on unification of Italy). This last constitution opened the way for series of special law that guides the tribunal, first in 1908 (*lex propria S. R. Rotae et Signaturae Apostolicae*), 1910 (*Le Regulae servandae apud S. R. Rotae Tribunal*), 1 September, 1934 (*Normae S. R. Rotae Tribunalis*) and finally with the Paul VI, 1967 *Regimini Ecclesiae universae* and John Paul II, new Code of 1983 and *Pastor Bonus* of 1988 there emerged the last special norms for the Rota published on February 7, 1994 but came into effect on October 1, 1994 (John Paul 11, 1982).

The new Code and the Constitution *Pastor Bonus* provide the specific competence of the Roman Rota (cann 1405, §3; 1443; 1444; PB art. 126-130). The Rota operates in first, second, third and further instances. Essentially it is an appeal tribunal that judges in turns of three auditors (i.e. a collegiate tribunal). In summary, according to the Apostolic Constitution *Pastor Bonus*, its unique and specific competence is that, the "Roman Rota is a court of higher instance at the Apostolic See, usually at the appellate stage, with the purpose of safeguarding, and, by virtue of its own decisions, provides assistance to lower tribunals. This competence as already indicated earlier, introduces our theme of discussion that is the service of the jurisprudence of the Rota as precedents to local Church tribunal.

It is necessary to remark that Roman Rota has received credible remarks annually from the supreme legislator, who always confirms the value of their judicial decisions especially for the entire Church and especially for the lower tribunals. In fact, this ordinary collegiate tribunal of the Apostolic See is both historical and international tribunal which brings together the contributions of the most diverse cultures, harmonizes them in the higher light of revealed truth and serves the ecclesial and Christian families. It is indispensable,

irreplaceable and most valuable collaborator of the First See. Furthermore, the Rota auditors and officials have been acknowledged by the Supreme Pontiff as perfect devotees, wise interpreters, renowned masters and doctors of law, marked with judicial talents and learning; and identified as priests and administrators of justice. Their function in the Church is qualified as having pastoral solicitude that is a service to law, justice and unity in the church and indeed the Christian family with the spirit of religious devotedness.

The Jurisdiction of the Roman Rota and Ecclesiastical Jurisprudence

Owing to the value of this jurisprudence of the Apostolic Tribunals, the supreme legislator in his ordinary exhortatory teaching has not failed to call on the local tribunals to have recourse to them. Here are their words:

- It is our wish that all ecclesiastical judges would model themselves on you, so as neither too readily nor without legitimate cause to allow dispensations from these norms.
- Indeed, any innovation of law, substantive or procedural, that does not correspond to the jurisprudence or practice of the courts and dicasteries of the Holy See is reckless.
- To the healthy jurisprudence of the Rota must correspond equally wise and responsible work in the lower courts.
- If it is true that the new Code clearly imposes the obligation of rapidly bringing all processes of first and second instance to completion, this must not result in the detriment of justice and protection of the rights of all the

parties to the cause and the community of which they are members. This requirement becomes the more urgent inasmuch as the jurisprudence of the Sacred Roman Rota, as that of the other apostolic tribunals, and also the practice of the dicasteries of the Roman Curia are considered to be guides and orientation for interpretation of the law in some cases. Along this line, the jurisprudence of the Rota has acquired increasing authority- not only moral but juridical authority- in the Church's history in reference to the evolution of the norms.

- The value of the Rota jurisprudence in the Church has always been noteworthy, given the knowledge and experience of the judges and the authority they enjoy as papal judges. Canon 19 of the new Code expressly confirms this.
- If then we limit the significance of this expression to cases of marriage nullity, it seems evident that, on the level of substantive law, i.e. in deciding the merit of the cases presented, jurisprudence must be understood exclusively as that which emanates from the tribunal of the Roman Rota (John Paul 11, 1992).
- The office entrusted to tribunals is situated within this framework of the Church's legal system (c. 16, §3) and, in a particular way and for a specific purpose, it is entrusted to the Roman Rota, inasmuch as the latter 'fosters unity of jurisprudence, and, by virtue of its own decisions, provides assistance to lower tribunals' (*Pastor bonus*, no. 126).

- Lower courts 'must conform' to a wise and unambiguous jurisprudence, both as regards substantive law as well as procedural issues.
- Rota is always essential as "the instrument of a wise and unambiguous jurisprudence to which other ecclesiastical tribunals must conform as to their authoritative model. This is the same reason for the now timely publication of your judicial decisions which concern matters of substantive law as well as procedural issues.

With these clear exhortatory words of the supreme legislator on identity, dignity and indispensability of the Rota in canonical jurisprudence, one is not in doubt of the quasi judicial precedents of this higher tribunal in both unity and harmony of jurisprudence and their suppletory judicial interpretative value. Hence Provost (1994) maintained that the tribunal personnel should know that the papal addresses even though it is neither a law, apostolic constitution nor an authentic interpretation of law (can 16, §§1-2), are nevertheless an expression of the mind of the legislator (can 17) and an ordinary teaching of magisterium which they owe religious submission of intellect and will (LG 25; can 752).

The judges of the lower tribunals should, therefore, study these sentences, use them as guide and endeavour to conform their sentences to them within the ambient of harmony and unity of jurisprudence which Roman Rota serves (PB art. 126), aware that the worth and efficacy of a higher tribunal depend not only on the greater theoretical proficiency or practical experience of the judges that compose it, but also on their judicial prudence. For this reason, therefore, remarked, Patrick S. Morris, "It is clear that many Rotal sentences and Rotal jurisprudence (as an evolutionary science) are a rich

source for the application of the law in the tribunals of particular Churches".

With these eloquent status and integrity and definitely through custom of uniform sentences over a long period of history, the Roman Rota provide the excellent juridical value as precedents for creative canonical jurisprudence, useful for the discernment of the will of the legislator and as suppletory sources of law (can 19), but always according to the established legal system, procedures and jurisprudential unity and harmony. This was expressed by Mendonça (1994) in these words:

> Neither the norm of law c. 19 nor papal teaching insist that to have suppletive efficacy the interpretation must become a legally established custom, rather both presuppose that the interpretation of law be definite, constant over a long period of time. Therefore, consistent repetition of the pronouncement on a particular matter for a long a period of time is necessary. If this requirement is lacking there is no jurisprudence in the true sense of the word, it has no normative value; nevertheless each judicial pronouncement or several of them have the juridic value intrinsic of its doctrine and the prominence of its author. (p. 167).

However as John Paul II (1992) emphatically expressed his mind in the understanding of canon 19 saying, "If then we limit the significance of this expression to cases of marriage nullity, it seems evident that, on the level of substantive law, i.e. in deciding the merit of the cases presented, jurisprudence must be understood exclusively as that which emanates from the Tribunal of the Roman Rota.

The obvious reason for this position is that law is made by persons, for the community of faith and such requires the

intervention of physical and concrete persons to interpret and apply as James Coriden (1992) added, "Law is not self-implementing….No law works automatically, nor is its application a purely mechanical robot-like function. All law is applied by persons. Interposed between the general and abstract norm of law and the community for which it is intended is always a human person whether judge or executive, counselor or citizen, the law is understood, interpreted and applied by persons" (p. 279). In most cases legislative dispositions are presented in general terms that offers greater horizons for jurisprudential navigation and determination especially from the Roman Rota. Examples are taken from the formulation of canons 1095 and 1098 as the Legislator indicated in these words:

> There still remain canons of great importance in matrimonial law, however, which have been necessarily formulated in a generic way and which await further determination, to which especially the expert jurisprudence of the Rota could make a valuable contribution. I am thinking, for example, of the determination of the 'grave lack of discretionary judgment', of the 'essential matrimonial rights and obligations' mentioned in c. 1095, as well as the further clarification of c. 1098 on error resulting from deceit, to mention only two canons.(John Paul 11, 1984).

The Roman Rota remains not only sources of interpretation when there is *lacuna legis* (can 19) but also source of authentic and reasoned jurisprudence and even for the most part source of legislations.

The Intervention of Roman Rota in the Local Church Tribunal Judicial Praxis

Owing to this dignity in status and jurisdiction of the Roman Rota and the auditors, we have witnessed a consistent intervention with the aim to assist the local Church tribunals towards a better reason sentence and healthy jurisprudence. In effect we have seen expressed appreciation on the positive efforts of the local Church tribunals especially within the bases of principle of canonical equity in application of the law in concrete cases. However, they auditors of the Roman Rota have not failed to use occasions of their excellent jurisprudence to point out some of the witnessed irregularities and anomalies in the jurisprudence of the lower tribunals. These include, as Burke (1987) stated:

- Claim of local tribunals to have suppletory force. However this observation cannot be sustained to the extreme because of the abiding testimonies of some sentences of the local courts that have the quality of rotal sentences as observed by A. Sabatani when he said, "Not only at the Commission of Vigilance for Ecclesiastical Tribunals of the Holy See but also in reviews including your own (*Studia Canonica*), I have had the occasion to read sentences for marriage nullity cases containing an excellent study *in iure* and a profound examination in facto: they are so well structured, and written with such a quality that they could appear in a collection of rotal sentences; and the invitation towards bi-directional collaboration and harmony by Cristian Begus (Sabatani, 1967).
- Introducing grounds that are neither specified in law nor developed in jurisprudence.

- Introducing juridic opinions and unorthodox views that are contrary to established jurisprudence. But we also have heard of the Rota which accepts the information presented by a lower court and examines it closely and then determines that the world is not ready for this jump in canonical thinking and so renders negative decision. We have also heard of the Rota which points out to a lower court that they seriously erred in handling a particular case. We have heard of the Rota which contributes greatly to the contemporary understanding of marriage, and then teaches lower courts of these insights.
- Operating a jurisprudence marked with procedural flaws and anomalies. According to Beal (1994) these include:

a. Multiple Assignments: The practice of allowing officials to serve concurrently in two hierarchically related tribunals or permit the same person to serve multiple roles in the same tribunal. The latter brings in the issue of incompatibility (can 152) and prohibition (can 1447) provided in the New Code. We give example of one person serving as the judge and the defender of bond or one person serving as defender of the bond and legal representative of the party. In relation to this anomaly, some have argued on the bases that it is not explicitly prohibited in the Code and refer to the praxis in the *turnus* of Roman Rota. However, Grocholewski (1987) was apt to add that everything which the Code does not forbid should not be considered simply as permitted. The legislator resolved this doubt when he said: "the same person cannot exercise the two functions at the same time (*contemporaneamente*)- to be judge and defender of the bond. This should be the case as Zenon

Grocholewski added, that the two offices of judge and defender of the bond "involves completely different tasks each of which demands a specifically different perspective and stance in the handling of cases….Any confusion between such very different responsibilities destroys the necessary constructive dialectic of the canonical process.

In relation to the same person doing the work of defender of bond and the legal representative, we present the same argument based on the restriction placed on both officers by the Code. The Code restricts the defender of bond "to present and expound all that can reasonable be argued against nullity or dissolution (can 1432) while the legal representative should defend the position of the party which may not be always in support of the bond (cann 1481-1490). It is then abnormal, incompatible and breach of office for the defender to act at the same time as legal representative. Both personnel are called to respond from different perspectives towards the finality of process, which is truth.

b. Negligence of Responsibilities: This is another anomaly seen in the activities of the judge, defender of the bond and the legal representatives.

On the part of *the judge*, it is shown in abdicating his office as the expert of experts with responsibility to evaluate (can 1579) and to decide matrimonial cases (can 1608). The judge therefore fails in his duty if he bows to decisions of the experts without evaluating their reports or opinion from the perspective of authentic Christian anthropology proposed by the Magisterium of the Catholic Church. John Paul II (1987) exhorted the judge in these words:

> The judge, therefore, cannot and ought not to expect from the expert a judgment on the nullity of marriage, and still less must he feel bound by any such judgment which the expert may have expressed. It is for the judge and for him alone

> to consider the nullity of marriage. The task of the expert is only that of providing the elements of information which have to do with his specific competence, that is the nature and extent of the psychic and psychiatric realities on grounds of which the nullity of the marriage has been alleged. In fact, the Code in cc. 1578-1579 explicitly demands from the judge that he critically evaluate the reports of the experts. In this evaluation it is important that he should not allow himself to be misled either by superficial judgments or by expressions that are apparently neutral but which in reality contain unacceptable anthropological presuppositions. (p. 1457).

In summary, the judge should uniquely consider the fundamental facts (can 1579, §1), fundamental methods (can 1578, §2) and fundamental Christian anthropology underlying the report or opinion of the expert (Manuel, 2001). The judge should therefore, avoid the scandal to the Christian community when he fails either to pay attention to this duty to critically evaluate experts' reports or worst still consider failed marriages and irregular situation ("under the pretext of some immaturity or psychic weakness of the parties") as grounds for declaring nullity of marriages. This negligence is seen when he abdicates the duty to instruct the cases or gather uncoordinated depositions without encounter with the parties or their witnesses. This was observed by Beal (1994) in these words:

> Not only do judges sometimes neglect to utilize the full authority of their office forthey too often relinquish control over the unfolding of the process to others. Sometimes judges completely surrender responsibility for the collection of evidence to those with only rudimentary

> canonical training. At other times, the only proofs sought are written (often handwritten) responses to standard questionnaire which are amassed by a tribunal secretary and turned over to the judge when the case is "complete. (pp. 143-144).

Personal involvement in all process are imperatives for the judge who should arrive at moral certainty both through acts and proofs and in his conscience (can 1608) and on whom lies the discretion of evaluating proofs and discerning what weight to be given to them (cann 1531; 1536; 1537; 1563; 1579 etc.). This certainty according to the words of Pius XII (1942):

> Is characterized on the positive side by the exclusion of well-founded or reasonable doubt, and in this aspect, 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 speaking is necessary and sufficient for the rendering of a judgment, even though in the particular case it would be possible wither directly or indirectly to reach absolute certainty. Only thus is it possible to have a regular and orderly administration of justice, going forward without useless delays and without laying excessive burdens on the tribunal as well as on the parties. (p. 338).

In relation to *the defender of the bond*, he is bound to defend the bond and never to present briefs in favour of the nullity of marriage (can 1432). His briefs should not be scanty or canned devoid of commitment. This attitude is a "dereliction of duty for a defender of the bond to submit 'boiler plate' animadversions without a serious study of the

case or to assume the role of the advocate. On this bases, instead of taking this stance in trials, Pius XII recommended a principle of action for the defender of the bond in these words: "In the interest of truth itself and for the dignity of his office, therefore, it should be acknowledge as a principle for the defender of the bond that, whenever the case calls for it, he has the right to declare that after a careful, thorough, and conscientious examination of the acts, he has found no reasonable objection to propose against the petition of the plaintiff.

For *the advocate*, the witnessed show of lackadaisical or questionable integrity that affects the right of defence for the clients. The advocate is a legal representative of the private parties. He should endeavour to defend the position taken by their client and never to act against the party. Hence we see some anomalies where the defender of bond acts as the legal representatives or the same person acts as legal representatives without the mandate of both ("the formal nomination ex-officio of one patron for both parties who prosecutes nothing is more a substantial contempt for and mockery of the law than a protection of the rights of the parties), or the court appointed legal representative (cann 1481, §2; 1490) who act not on behalf of the party but the tribunal or when the tribunal to appoint the court appointed advocate to act as the parties' procurator. These are breaches of law since the parties alone appoints the procurator and not the tribunal-except *ad litem* (cann 1481-1485). The tribunal can only appoint ex-officio advocate where a party lacks one (can 1481, §3). This praxis contrary to legal dispositions provokes at the end of the trials an irremediable nullity of sentence (can 1620, 6°).

c. Laxity and Rigidity in Tribunal Praxis: These are still other anomalies in the effort to interpret and apply the

legislative dispositions in concrete matrimonial nullity cases that must be avoided in tribunal practice. On the one hand, laxity allows permissiveness, erosion of law and easily obtained sentence, while on the other hand, rigidity supports juridical formalism and runs counter to the spirit of the law. The later involves severe scrupulosity that applies the law "with exaggerated strictness and to ignore accepted jurisprudence, and so deprive people of a hearing that is truly just and fair. The middle position to this is the option of canonical equity (cann 221; 1752) which is "an attitude of mind and spirit that tempers the rigor of the law… and a force for proper balance in the mental process that should guide a judge in pronouncing sentence.

d. Delays: This is besieging tribunals at all levels, i.e. at the local and the apostolic tribunals. The legislator disposed: "Judges and tribunals are to ensure that, within the bounds of justice, all cases are brought to a conclusion as quickly as possible. They are to see to it that in the tribunal of first instance, cases are not protracted beyond a year and in the tribunal of second instance not beyond six months. In many cases we experience delays in acceptance or rejection of *libellus*, instruction of cases and giving of sentences in all instances. Some faithful with genuine cases for nullity are turned back on the bases of accumulated and not yet disposed cases. One needs to see many carry over cases of more than a year in the annual reports of tribunals.

In spite of well-known procedural innovations in the new Code the problem continues unabated. In effect the Church tribunals are daily challenged to give justice to the people who visit the tribunal asking for their status in the Church. They should continue to attend to these petitioners diligently, prudently, conscientiously and with greater dedication on the part of the judges and the tribunal to exploit the provisions of the law and intensify their knowledge of

these procedural laws in order to attend to this assignment promptly and urgently. However the judges are reminded that:

> Every suspicion of injustice will be excluded in carrying on the proceedings, avoiding every delay not demanded by the particular nature or special circumstances of the individual case, and proceeding with attentive promptness, diligently and expeditiously in performing the juridical acts as in drawing up, notifying, and executing the judgments. You know, in fact, that every culpable delay, caused by the negligence or foreign occupations, in the administering and executing of justice is already in itself an injustice, which each member of ecclesiastical tribunals must meticulously strive to avoid at a distance. (John Paul 11, 1978).

While this injustice should be avoided, other extremes are to be avoided which include: "pitfalls of haste which deprives the parties of a calm examination of the case and of delay which deprives the parties of timely replies to their problems that are often a source of suffering and call for prompt solution. False speed to the detriment of the truth is even more seriously unjust. This is a challenge to all tribunals of the Church.

On the one hand, however, the local Church tribunals have made genuine complaints on the complex nature of the ordinary process as in most cases reasons for on delays. The legislator allows for only ordinary process in handling matrimonial cases (can 1690) and if oral contentious process is used, the act is invalid and null (cann 1656, §2; 1669). Oral contentious process is allowed only in attending to incidental matters (can 1590, §1) or cases concerning separation of spouses (can 1693), while documentary processes are allowed

in cases where a document confirms with certainty existence of diriment impediment, defect of canonical form or lack of valid proxy (can 1686). Thus the demands of ordinary processes create tensions for certain local tribunals where means of communication are not in abundance or really scarce.

e. Secrecy: The Church provides for various trends in observation of confidentiality and secrecy in procedural laws (cann 1455; 1508; 1598) and punishment to tribunal officials for breach of secrecy (can 1457). However, conflicts arise in the tribunal desire to observe secrets to the extent of breaching the demands of rights of defence. But Pope Paul VI remarked: "a trial or process is to be as a rule public; and yet justice itself may require that the matter be handled secretly. This aspect is the issue in the area of rights of defence concerning the publication of acts (can 1598) and the sentence (cann 1614; 1615).

Finally these observations are made in the interest of the Church with the commitment to healthy administration of justice and harmonized jurisprudence.

Citations of Some Jurisprudential Precedents of the Roman Rota for Church Tribunals

Error Redundans

Canon 1097 concerns error of fact in contrast to error of law discussed in canon 1099. Canon 1097 in its two paragraphs treats the issue concerning error of person and error about quality of the person principally and directly intended. This is a natural law provision and as such retroactive. It is also based on the Council's personalistic approach to marriage bond as ordained towards the good of spouses and for the partnership of life, love and mutual perfection of the spouses. This conjugal partnership is an affair of two real, concrete and certain heterosexual persons that originates from their irrevocable consent which is mutually and reciprocally given

and received for the purpose of establishing marriage (Colagiovanni, 1997).

The spouses, the material object of the matrimonial consent which is the efficient cause of marriage cannot err with regard to the identity of the person with whom one intends to establish a partnership for the whole life (can 1055, §1; 1134). This person is the physical individual distinct form others, endowed with rights and duties in the Church (can 96) and marked with unique characteristics or qualities that individuate him or her and make him or her different from any other.

In canon 1097, §2, therefore, the legislator canonized the doctrinal and jurisprudential trends in relation to error of quality redounding on the person (*error redundans*). The historical figures in these discussions include, Yves of Chartes, Gratian, Thomas Aquinas, Thomas Sanchez, Alphonsus Liguori and the jurisprudential precedents from Rota especially that of *coram* Canals (April 21, 1970) and *coram* Pompedda (July 23, 1980). The fundamental position is presented by Liguori who stood at the apex of this history in his famous rules, as cited in(Mendonca, 2000) thus: 1° when a person actually intends to contract under condition of this quality. When this quality is simply deficient, then the consent is altogether deficient. Trac no. 1014 2° when the quality is not common to others, but is proper and individual to some determined person ("error in person"). This quality is proper and individuation. Trac no. 1015 3° "Therefore, the third rule, which St Thomas gives […] is, that if consent bears directly and principally on the person, then error concerning a quality redounds to the substance as if the consent is principally directed to the person and secondarily to the quality." Trac no. 1016.

The jurisprudential precedents of Rota was witnessed in the famous sentence of *coram* Canals, April 21, 1970, that provided a consideration of the substantial value of quality and an accidental element in relation to the identity of the person noted in the words of Arena (1978):

> Con la famosa sentenza coram Canals del 21 aprile 1970 la giurisprudenza giunge ad un punto di svolta, superandos l'interpretationze restritttiva del Sanchez, ed approdando al concetto di persona 'magis complete et integre considerata', il quale concetto porta all nascita di un nuovo orietamento interpretativo dell'error redundans per il verificarsi del quale dovrebbero considerare tutte le ipotesi nelle quali la qualità morale, giuridica e sociale 'tam intime connexa habetur cum persona physica ut, eadem qualitate deficiente,e tiam persona physica prorsus diverse risulted.(p. 371).

The *turnus* employed personalistic dispositions of the Council and the disposition of canon 1083 of the 1917 and provided as it were a landmark and new interpretation to the value of the quality of person. In this sentence, the quality is intended "more than the person (Rinere, 2004).

Continuing in this trend a decade later is the sentence *coram* Pompedda of July 23, 1980, that showed the fundamental relationship between the provision of canon 1083 of 1917 Code and canon 1097, §2 of the 1983 Code, i.e. on the interpretation of *error redundans* as error of quality directly and principally intended. In his remarkable sentence, Pompedda opined, "an error of quality has the same effect as an error about a person where the quality is intended more than the person, that is where the contracting party aims his consent directly and principally to a particular quality or qualities, and indirectly and in a subordinate way to the person. Hence, the quality shapes and specifies the person to such an extent that

the object of consent substantially contains that quality in its scope, and if the quality is missing the consent itself therefore disintegrates.

These jurisprudential landmarks of *coram* Canals in 1970, followed a decade later by *coram* Pompedda influenced jurisprudence till the official intervention of the legislator in 1993 allocution to the Roman Rota. In this allocution, John Paul II (1987) expressed the mind of the legislator in relation to meaning of quality directly and principally intended in these words. However, in the matter of error of fact (*error facti*) too, specifically when it is a question of 'error of person' (*error in persona*), one may not attribute to the terms used by the legislator a meaning alien to canonical tradition; even as 'error about a quality of the person' can impugn the consent only when a quality, neither frivolous nor trivial, was 'directly and principally intended', that is, as Rotal jurisprudence has effectively asserted that when the quality is intended before the person' (*quando qualitas prae persona intendatur*).

These qualities to be invalidating (i.e. requisites for the syllogism of proofs) must be present and certain, be the motivating force for marriage (highly estimated), be directly intended by the individual (and not through an intermediary), be principally intended (i.e. above all else), and finally, there is need to evaluate the first reaction of the individual on discovering the presence or no of the quality in question. These qualities may be marital status, social, educational or economic status, political affiliation, age, physical health, mental health, virginity, procreative capacity, religious belief, projeny, moral qualities, pregnancy etc. These qualities are normally bases of the very communion of life and love among people in different cultural contexts and the imperative for conjugal personal self gift and grounds for the invalidating effect of error of fact. However, Colagiovanni (1997) cautioned properly that "It

often happens after the celebration of the marriage, with the onset of new and unexpected circumstances, one demands from the other spouse exceptional qualities and virtues which he had never thought about before the wedding. Indeed, many do make an error unless it is of the person or about a quality directly intended at the moment of giving consent, does not render the marriage invalid.

Error Pervicax

Jurisprudence has also identified ***indirect proofs*** like: *adminicula*: supporting or auxiliary proofs; *adiuncta*: circumstantial evidences like motives (e.g. deep-seated error-*error pervicax*) and indices (an index is an established fact that reveals or points to the existence of a distinct and as yet unknown fact in virtue of the a nexus between the two facts) (Beal, 1995).

In relation to the later it is an acknowledged adage that action speaks louder than words, that is to say that non-verbal confessions (cann 1535-1536) need not be made only in words. In *coram* Fiore, "the mind is discerned from what is done…for, although the mind and intention of a person may be discerned well from words, nevertheless facts are stronger than words for demonstrating a mind of this kind.The confessions (…) need not necessarily be made in words; deeds, which are sometimes more eloquent than words, are sufficient provided, however, that the deeds are many, certain, and unequivocal, they demonstrate in the common estimation that the contracting party did not want to bind himself in marriage (Sanson, 1988).

This trend is seen in the issue of radical error which determines the will (can 1099) in action, choice and way of life. In this context, we experience a fixed mind set or a habit of mind that exalts the subjective end (*finis operantis*) of the individual which in the context of simulated consent is radically contrary to the objective end of matrimonial covenant

(*finis operis*). The Benedict XIV 1767 presumption (seen in can 1101, §1: "the internal consent of the mind is presumed to conform to the words or the signs used in the celebration of marriage") is rethought in jurisprudence in the light of *error pervicax.* Summarizing this trend, Pompedda (1995) said:

> It would seem, therefore, as regards both Catholics and others that the principle should be retained that, the more deeply and radically an error is ingrained and endorsed, the easier it is to establish a presumption in favor of an essential property of marriage being excluded. The will, which is a kind of blind faculty of the soul, generally goes along with whatever is presented to it by the intellect….Indeed it sometimes happens that a person holds an opinion (rightly or wrongly) with such intense conviction that the opinion becomes, as it were, part of his or her personality and when that happens, the will follows along almost irresistibly. (p. 721).

Error pervicax creates implicit intention and positive act of exclusion; proves itself with such intensity with its attachments to an erroneous wish or way of life or an ideology contrary to teaching of the Church or the presumption of law in canon 1101, §1. This tendency is observed in the erroneous life situations of the egotist, atheist, hippy, one imbued with divorce or anti-child mentalities. The precedents from Antoni Stankiewicz suffices as a perfect example for the deep seated errors of the hippies that combine a philosophy of non-violence with rejection of all human institution that impinge upon personal freedom; existing firm mind set and pervasive will to break all connections with the past, steadfast rejection of any sort of long-term human behavior/commitments because of their conviction about fragility of everything,

opposed to matrimonial bond and permanent obligations. Thus, among young people who are commonly called 'hippies,' who were opposed to every bond of marriage and to any permanent obligation resulting from marriage, and proposed free love, and lived out such principles in their life and were directed thus to act by an attitude of their will, there exists the implicit will of rejecting marriage or at least a grave presumption of a positive act of the will excluding marriage (Stankiewicz, 1982).

Hence whether through radical error or deep seated error (*error pervicax*) or life style or ideologies which definitely determines the will (can 1099) and changes this presumption of the law, one contracts invalidly. By way of definition, *error pervicax* is that habit of mind which vehemently resists the truths of faith and the institution of Christian marriage itself.

The requisite for a valid human act of consent is that it should proceed from the intellect and will since an adage holds: *ubi intellectus ibi voluntas* and *nihil est intellectu quod non fuerit in sensu; nihil volitum nisi praecognitum*. Consent involves sufficiently informed mind, sufficient knowledge, free will and capacity for self-determination. The moments in these processes include: deliberation, judgment and decision. Hence, If that moment of free consent is missing or in any way flawed, there is no valid marriage, no marital relationship, no bond or obligation arising from marriage (Lawler, 1985).

In *coram* Felici, "The erroneous opinions fix their root so deeply in the soul that they constitute in them firm and steady grip almost a new nature, and if no reason is apparent for withdrawing from the erroneous idea (then) it can be prudently concluded that the marriage was contracted in accordance with the error. This has been the constant precedents in the jurisprudence of the Roman Rota and used in cases of simulation (can 1101), incapacity (can 1095) and

force and fear (can 1103) and error that determines the will (can 1099).

The Good of Fidelity and Property of Unity

The new way of thinking initiated by Fathers of Second Vatican Council got flowered in the jurisprudential precedents of c. De Jorio of October 30, 1963 with a distinction between fidelity and unity: "An intention *contra bonum fidei* not only included violations of unity (e.g. by polygamy), but also included an intention against the exclusivity of sexual relations. This position becomes judicial precedents in the canonical jurisprudence. Summarizing this trend therefore, Wrenn (1988) said that according to the older jurisprudence …fidelity was reduced to mean unity; whereas, according to newer jurisprudence…unity was extended to mean fidelity.

This new trend and new way of thinking is drawn from the provisions made in canon 1057 on the formal object of consent as conjugal self donation and acceptance and complemented by canon 1134 that disposed that in the consent that give rise to the marriage bond, there is also a creation of right that is permanent and exclusive. In this context, the property of 'unity' and '*bonum fidei'* are two distinct element, unity signifying unicity of the bond and *bonum fidei* denoting exclusivity of extra marital relationship (conjugal acts) and now it includes also other essential elements of *consortium totius vitae* In jurisprudence, therefore, property of unity is violated by polygamy (polyandry and polygyny), while the good of fidelity is violated by adultery.

Interpersonal Relationship

The ordination of marriage to the good of spouses is one of the crowning achievements of the Council and the new Code (can 1055, §1). The controversy was concluded by Felici (1983)

insisting on its inclusion in these words, "The expression '*ad bonum coniugum*' ought to remain the ordination of marriage to the good of the spouses is an essential element of the matrimonial covenant, not a subjective end of the parties" (p. 221). In spite of this conclusion and its final outcome in the new Code, canonical doctrine and jurisprudence are still determining this obvious generic provision of the Code on the good of spouses as an end and also as an element as drawn from the position of the president of the Code Commission. Jurisprudential attentions are focused in determining the content of the good of spouses (can 1055, §1); the rights and obligations of marriage (can 1095, 2°, 3°); and the essential elements of marriage (can 1101, §2) etc. It is good to mention that jurisprudence has endeavored to draw its conclusions by departing from the canonical provisions on the material (the spouses) and formal (conjugal self gift) objects of matrimonial consent (can 1057, §2).

However, in all sincerity, the concept is pregnant with meaning and all-embracing implying physical, emotional, intellectual and spiritual well-being of the couple. The meaning should therefore emerge from the identity and status of the spouses as human persons inscribed in a given socio-cultural context. The good of spouses is acknowledged as the fourth good of marriage, involving as it were conjugal partnership and interrelationship; conjugal love and perfection and conjugal heterosexuality. These belong to the essence and essential elements of marriage and belong to those things which the spouses have right to as already confirmed in doctrine and jurisprudence (Warenn, 1988).

The good of spouses calls for mutual help as expressed in the book of Genesis (Gen 2: 18-25) since to be human means to be called to interpersonal communion" especially in the marital community. Hence, the good of the spouses concern the sum total of all the goods within this interpersonal and intrapersonal relationship and integration. It concerns all

that is necessary to maintain, establish and fulfill a true and a healthy conjugal life. It implies true friendship, companionship, capacity and willingness to love, trust, relate, communicate, mutual understanding and authentic conjugal self-gift etc.

Remarkable in this area is the reasoned sentence coram Anné of 1969 where he brought to focus the Conciliar teaching to the level of law with marked jurisprudential breakthrough on importance of intimate community of life and union of person and conjugal life (GS 48). In his words Anné (1969) affirmed:

> Married life, that is, the state of marriage, principally consists in an interpersonal exchange which has a healthy interpersonal orientation in each person as its foundation. It follows that if the life history of the person marrying, according to the opinion of experts, clearly indicates that the person even before marriage had been seriously deficient in intrapersonal and interpersonal integration, that person must be considered incapable of understanding correctly the distinctive character of the communion of life directed toward the procreation and education of children, which is marriage and consequently, incapable likewise, of making a correct reasoned judgment about establishing that permanent communion of life with another person; and so, in this case that maturity of judgment which can lead to the valid choice of marital partner is lacking. Yet the person can remain able to fulfill other responsibilities which do not involve this intrapersonal and interpersonal integration. (p. 419).

Other outstanding sentences with laudable provisions in the law sections are that of *coram* Pompedda who summarized the good of spouses as involving the right and correlative obligations to communion of life that is, the rights and obligations associated with a unique or specific way of acting in interpersonal relationships proper to spouses determined by what is essentially required and adequate from the nature of marriage and having juridical importance, and also *coram* Bruno who declared with clarity that the Good of spouses as an end and essential element of the nuptial covenant, is the sum of all goods which flow from the interpersonal relationship of the same spouses. If they do not suffer from any psychic anomaly of personality, they together, through apt interpersonal relationship, enrich each other as individual persons and the entire conjugal life.

Double conformity of Sentences

The necessity of two conforming sentences in marriage nullity cases was made obligatory by the Apostolic Constitution *Dei Miseratione* of Benedict XIV. This entered into further legislations on the Church in the old Code of 1917 and the Instruction, *Provida Matter Ecclesia* of 1936 and finally in the new Code in the area of adjudged matter (can 1641, 1°). The fundamental reason for this requirement is the Church's obligation to preserve the sanctity of marriage bond. Pope Benedict's Constitution and subsequent legislative dispositions and Instructions, the institution of the office of defender of bond and confirming act of second Instance (or further) tribunal are ways to establish truth and moral certainty for the affirmative decisions in matrimonial trials.

The disposition of the legislator in the new Code reads that without prejudice to can. 1643, an adjudged matter occurs when: 1° there are two conforming judgments between the same parties about the same matter and on the same grounds. The elements for double conformity involve: between the same

parties (*inter easdem partes*), about the same matter (*de eodem petito*) and on the same grounds (*ex eadem causa petendi*). The problem that emerges from an attempt to apply this norm touches not the issue of identity of persons or the matter but more on issue of the third element i.e. the same ground(s)- "*caput* or *capita*" of petitioning (*eadem causa petendi*). Jurisprudence now distinguishes between formal conformity of sentences (i.e. based on the same grounds of nullity) and substantial or equivalent conformity of sentences (i.e. based on different grounds of nullity). Speaking on these later developed jurisprudential precedents Mendonça (200) holds:

> The difficulty consists in the fact that all grounds of nullity intrinsic to marriage consent are "defects of consent". But in law all defects of consent are formally distinct, and therefore, if two conforming decisions, whether affirmative or negative, are pronounced in a particular case on two distinct grounds (capita) there cannot be a quasi res iudicata unless recourse is made to the principle of "equivalent" or "substantial" conformity of sentences.(p. 345).

Here Augustine Mendonça presents both the statement of the problem and an answer at the same time. The canonical provisions exalt the issue of grounds as important in marriage trials not only in the issue of conformity but also on movements of the entire processes. The trial is initiated formally by a petition (*libellus*) from one of the parties who has a legal standing to impugn marriage (cann 1501; 1674). This petition must endeavor to state the ground upon which the intervention of the judge is requested (cann 1502; 1504; 1505). The action of the judge to summon the parties by decree is further to clarify this ground of nullity i.e. to establish the joinder of issues (*contestation litis*- cann 1507; 1513-1514;

1677; 1639). This is the issue which the judgment on the pain of irremediable nullity must at least address (can 1620, 8°). In essence this ground determines also the issue to be studied, orientates the questions to be asked to parties, witnesses, the terms of reference for the expert and the action of the Instructor Judge (can 1528).

According to doctrine and jurisprudence and because of the disadvantage of the parties in relation to canonical knowledge, it is the responsibility of the judge to determine the final structure of this ground. This draws for the principle which states that you give me the facts, I give you the law, (*da mihi facta, dabo tibi ius*). This he does through consultation of both private and public parties and their legal representatives (cann 1513-1514; 1677). The legislator gives the judge also the duty to supply for the negligence of the parties (can 1452, §2). This allows judge ample latitude to actually establish the ground upon which pronouncement of judgment will be based. In canonical jurisprudence this ground must be clear and limited; requires the intervention of the party for its change (can 1514; DC, art. 136); requires case of status of persons and serious proofs for new grounds and new examination at the appeal grade (can 1683; 1644; 1639; 1684); and finally in relation to cases of defects of consent can stand alone or in subordination or connection.

De Jorio (1964) two classic sentences of 1964 provide the required foundation for the consistent and constant development of jurisprudence with regard to the resolution of the problems concerning double conformity of sentences especially on different titles of nullity, a position that has influenced jurisprudence up till date. This later developed jurisprudence is called the principle or doctrine of equivalent or substantial conformity of sentences (DC, art. 291, §2).

The sentence *coram* De Jorio, affirms that it belongs to the competence of the judge to give title of nullity in marriage cases and based on substantial facts and under different titles

of nullity in different instances, equivalent conformity of sentences that is executive emerges. Following this trend R.C. Bauhoff and Mendonça (1990) remarked:

> The principle of "substantial conformity of sentences" has been explained […] as follows: each sentence which is declared to be conforming must be weighed in light of all the acts of the case. It is also necessary to see whether or not the two conforming decisions depend entirely on the same facts or proofs. The basis of decisions is not the legal designation (caput) but the facts and proofs presented by the parties. Therefore, if certain intrinsic correlation between both grounds is present, the declaration of substantial conformity of sentences is legitimate (p. 326).

The existence of this principle draws from the legislative provision and use of language i.e. "conforming" (can 1641, 1°), which is not to be interpreted strictly as identity or formally conforming in all the three elements, but also admit of substantial or equivalent conformity. This word will be interpreted from the basis of *lacuna legis* i.e. appeal to the jurisprudence of Roman curia which in our case the practice of the Apostolic Signatura and the Tribunal of the Roman Rota. These two Apostolic Tribunals, especially the Rota have maintained and sanctioned a constant and customary jurisprudence that has now assumed the status of judicial precedents among local tribunals as far as this doctrine of equivalent or substantial conformity is concerned.

The consistent position of the jurisprudence of the Rota establishes that for the declaration of the principle of equivalent or substantial conformity of the sentences, the two sentences based on different grounds must be founded on the

same solid juridical facts i.e. such facts and proofs that are at the foundation of both sentences and have the capacity to render the concrete marriage invalid. Hence the presence of the equivalent or substantial conformity of sentences does not depend on the legal formula or title given or the different grounds; neither does it depend on mere confluence of simple facts or circumstances; nor be based on distinct probative facts and worst still experience admit of situation where one sentence denies the juridical facts admitted by the other sentence. The essence depends on unity and solidity of the same juridical facts even though there are different grounds. Such declarations may occur in cases based on this distinct grounds but may be equivalently or substantially conforming based on the same solid provable juridical facts. For example, total Simulation and Partial Simulation (can 1101, §2); Will determined by Error (can 1099) and Will that exclude by Positive Act the Indissolubility (can 1101, §2); Total Simulation (can 1101, § 2) and Grave Fear (can 1103); Conditional Consent (can 1102) and Partial Simulation (can 1101, §2); Total Simulation (can 1101, §2) and Grave Lack of Discretion (can 1095, 2°); Exclusion/Simulation (can 1101) and Consensual Incapacity (can 1095), etc.

It is good to indicate here that the tribunal with the authority and jurisdiction to declare equivalent or substantial conformity of sentence is the tribunal of the second instance or appeal tribunal (cann 1682, §2; 1684, §1) and for the Roman Rota the higher *turnus*. The new Instruction, *Dignatis Connubii* confirmed this "Without prejudice to art. 136 and without prejudice to the right of defense, the tribunal of appeal which issued the second decision is to decide about the equivalent or substantial conformity, or else a higher tribunal.

Finally, we have endeavored to present certain areas of marriage nullity cases which has witnessed unique and significance jurisprudential precedents and determinations which will be of immense assistance to the local Church

tribunal in their respective efforts to receive and apply the laws of the Church at both substantive and procedural levels. There exists also precedents in relation to simulation (can 1101); force and fear (can 1103); deceit (can 1098); impotence (can 1084), condition (can 1102) and significantly on consensual incapacity to marry (can 1095) which is the most frequent title of nullity in many tribunals now.

Conclusion

Jurisprudence drawn from two latin words "*iuris*" and "*prudentia*" is interpretation and application of law in concrete circumstances and cases. The Church has operated significant judicial system and sound jurisprudence directed always to her finality which is salvation of souls (can 1752), finality of process which is truth (cann 1530; 1531, §1; 1548, §1; 1562, §1) and also the purpose of process which is defence and vindication of the rights of the faithful (cann 221; 1400, §1; 1598, §1; 1620, § 7°).

To accomplish this onerous and noble judicial mission the Church has established personnel and organs that exercise vicarious judicial power of governance both at the universal (apostolic tribunals) and the particular (diocesan and Inter-diocesan tribunals) levels. The Roman Rota as the ordinary tribunal of the Apostolic See exercises its jurisdiction not only for suppletory services (can 19) but for unity and harmony of jurisprudence (PB art 126). We have presented the status and jurisdiction of this tribunal especially in the context of serving or assisting the local tribunals safeguarding the stability of marriage bond through its 'quasi jurisprudential precedents'.

In the local Church we have testimonies of dearth of personnel and efforts of the few available personnel to apply the law within their contexts. While on the one hand, some of these tribunals and their sentences are credible, on the other

hand however, some demonstrate serious situations of laxity and flaws in the observation of canonical substantial and procedural laws. Some of these anomalies we have made effort to present in this academic exercise. It is really within this framework that we see the justification of the jurisdiction of tribunal of the Roman Rota in providing unity, harmony and guide to the local tribunal personnel. Within these tribunals, lies a heavy obligation to operate a healthy jurisprudence aimed at safeguarding the matrimonial bond and the defence of the rights of the faithful. The personnel operating in these tribunals should be imbued with the zeal for justice, unshakeable honesty, and fidelity to law- divine natural and positive law and ecclesiastical laws. Thus exhorted Pius XII (1942):

> The conscientious observance of these norms is a matter of duty for the judge; but on the other hand in their application he must remember that they are not ends in themselves, but means to an end, that is, to attain and guarantee a moral certainty with an objective foundation as the reality of the fact. It should not come about that, what the will of the legislator intended as a help and security for discovering the truth, become instead an obstacle to its discovery. If ever the observance of formal rules of law results in injustice or is contrary to equity, there is always a right of recourse to the legislator. (p. 20).

In this onerous duty, therefore, the tribunal officials should in applying the law take cognizance of the values underlying the laws, their proper interpretation and genuine application within socio-cultural context guided by the principle of equity, and the jurisprudence of the Roman Rota. They should up-date (can 279) and widen their knowledge of the Code; legislative and doctrinal dispositions of the Church at both universal and particular Church levels; praxis and

jurisprudence of the superior tribunals especially that of the Apostolic See; the publications of learned authors; Behavioural Sciences (i.e. Psychology, Psychiatry etc.) and Medical Law. He should attend professionally organized conferences and seminars in order to improve their knowledge. John Paul II (1984) exhorted:

> The law (ius), which gives you the ideal measure or criterion of discernment to apply in the evaluation of the facts. This law (ius), which will guide you, giving you sure parameters, is the new Code of Canon Law. You must know it perfectly, not only in the procedural and marriage sections which are so familiar to you, but in its entirety, so that you may have complete knowledge of it, as magistrates (magistrate), that is, as masters of the law that you are. This knowledge presumes an assiduous scientific, deep study which is not limited to pointing out the possible variations with respect to the previous law or to establishing its purely literal or philological meaning, but which takes into consideration the mind of the legislator (mens legislatoris) and the reason of the law (ratio legis).This will give you a global view which enables you to penetrate the spirit of the new law. For the issue in substance is: The Code is a new law and it is to be evaluated primarily in the perspective of the Second Vatican Council to which it is intended to conform fully. (pp. 182-183).

Finally, the local Church tribunals and the apostolic tribunals have the obligation to hearken to these words of the Supreme Legislator in the implementation of Law. Granted

that the Rota jurisprudence serves as suppletory law and help to local Church tribunal, however, the liberty of judges affirmed in the legislative dispositions (can 16, §3; 1642, §2) calls on both levels of Church's judicial praxis be open to one another in responsible co-operation, coordination and collective solidarity since the Spirit that guides the Church is profoundly present in all places and in the community of faith. This is all the more necessary especially when conflicting sentences emerge from Roman Rota, making it impossible for the local Church tribunal to discern the "true custom" to follow which is really according to the reason of the law and mind of the legislator. Nevertheless, according to the mind of the legislator (as cited in this work), the local Church tribunals must definitely look up to the tribunal of the Roman Rota as precedents and authentic guidance both in interpretation and application of law in their various context.

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