

## MATRIMONIAL TRIBUNAL MINISTRY

Foreword:

Dated 6 July 2000, the Pontifical Council for Legislative Texts has reaffirmed the ban on the reception of Holy Communion for divorced and remarried Catholics -- without the benefit of the formal declaration of nullity of their previous marriages. The reaffirmatory declaration is based on Canon 915 CIC providing among others, that those “who obstinately persist in manifest grave sin are not to be admitted in holy communion.”

The prohibition is premised on divine positive law, and wherefore transcends the sphere of purely ecclesiastical law, and thus goes beyond the competence of any Church authority to alter it as this would go contrary to standing Church magisterium. It was St. Paul who expressedly and clearly said: “. . .if anyone eats the Lord’s bread or drinks from his cup unworthy, he sins against the body and blood of the Lord.” (I Cor. 11:27)

For one reason or another, there were many and different reactions to the re-affirmation of an existing doctrinomoral norm. But among the many voices raised in favor or against it, there was one more direct and relevant as far as we herein this “Update” Week are concerned. This: The lament was forwarded by Catholic separated couples that were finding it rather difficult if nor morally impossible to have their cases resolved. Reason: Either because there are really no Marriage Tribunals in their places, or theirs are actually non-functional, or in fact functional but over-loaded with too many cases that long delays in their resolution have sadly become the rule.

Without citing more profound arguments and more canonical reasons, it becomes evident that the matter of “MATRIMONIAL TRIBUNAL MINISTRY” is an ecclesial necessity and urgency. Truth to tell, as of Year 2001, while there are no less than 79 Ecclesiastical Jurisdictions in the Philippines, no more than 13 have operative Matrimonial Tribunals -- and no more 2 or 3 doing better than all the others. With this revealing state of Tribunal affairs, all our protestations in defense of justice and truth are neutralized by our own big inadequacy in Marriage Tribunal Ministry which is a component of Church judiciary governance.

It would be good for us to consider our thematic agenda for this brief conference under three general headings: One, “Marriage” even if only for us to review how this most commonly opted state of life among all peoples and in all countries in fact remains as a very intricate and distinctive reality in the order of nature and in the sphere of grace. Two, “Ministry” so that we can the better understand not only its profound premise and significance but also its intrinsic bearing and implications in the life of the Church. Three, “Matrimonial Tribunal Ministry” in order that we can somehow better appreciate though but in a more general perspective, the imperative of this institute whose complex constitution, prudent management and delicate operation simply respond to the what, the why and the how of marriage in the mind of the Creator and in the appreciation of His Church.

## A. MARRIAGE:

“The matrimonial covenant by which a man and a woman establish between themselves a partnership of their whole life, is by its nature ordered toward the good of the spouses and the procreation and education of offspring; this covenant between baptized persons has been raised by Christ to the dignity of a sacrament. Consequently, a valid marriage contract cannot exist between baptized persons without its being by that very fact, a sacrament.” (Canon 1055 par. 1-2, CIC)

This canonico–pastoral notion and connotation of marriage bring to fore its multifaceted reality, its distinctive elements, and its technical underpinnings.

### 1 Multi – faceted Reality:

A partnership, a contract, a covenant, a sacrament -- all these mean and apply to one and the same human way of life, to one and the same human option of living: Marriage. It would not be easy to find another institution in the Church that is endowed or adorned with such variant and manifold constitutive elements, i.e. that is as complex and profound as marriage.

#### a. Partnership:

A part by itself remains but a part. But when a part is joined to another co–equal part, then a partnership is born. And when two co–equal parts become an intimate partnership of love and life, then they become in reality nothing less than a complete whole that they in effect emerge as “two–in–one”.

Two–in–one in life and company, in abundance and want, in joys and pains. Two–in–one roof to life under, two–in–one table to eat from, two– in–one bed to rest in. One name. One couple. One fortune.

#### b. Contract:

A meeting of two minds. An accord of two hearts. A binding of two persons. These are the progressive elements of marriage. Two separate and different individuals, having their thinking attuned, feeling the same one for another, opting to have themselves bonded as one.

Marriage is not be simply a contract, but a contract it still is. Marriage is an inviolable contract, but its fundamental contractual elements remain. Thus, even Church Law recognizes the competence of the State in the matter of marriage, more particularly in conjunction with its civil effects.

#### c. Covenant:

Marriage is basically a triadic functor, i.e., it is both premised and drawn from three reference focal points, viz., a man, a woman and their God. That is to say: A man and a woman not only giving and accepting the persons of one another, but also and significantly so, invoking God as their Witness.

The nature of a covenant as an indivisible and irrevocable, sanctified and sanctifying spousal commitment and conjugal pact precisely derives from the sacred attributes of the Witness as one, divine and everlasting God.

#### d. Sacrament:

From its plain partnership composition, to its contractual perspective and up to its covenant dimension, marriage among the baptized has been elevated from its reality in the order of nature to its actuality in the sphere of grace as a sacrament.

At par with all the other sacraments -- that are signs and means of grace, that are symbols and vehicles of salvation -- the dignity of marriage as a sacrament makes this a constitutive element in the economy of salvation.

#### 2. Distinctive Elements:

Marriage is so distinct and singular an ecclesial reality that it is markedly different from all the other sacraments, particularly in conjunction with its subject recipient, its minister, and its expansive nature.

##### a. Subject Recipient:

While all other sacraments are received and actualized in but one person -- one individual is baptized, confirmed, and become a communicant, is absolved, anointed and ordained -- marriage is the one and only sacrament brought to actuality by the two persons as a couple recipient hereof.

It is rightfully said that the sacrament of marriage “non claudicat”, i.e., it can only be an existent reality in two persons -- a man and a woman -- never in but anyone alone.

##### b. Minister:

While all the other sacraments are as a rule administered by the members of the clergy in their ordained prerogative as “ministers of the word and the sacraments”, marriage is the one and only sacrament whose minister is the very couple getting married -- with the deacon, priest or bishop concerned acting but as official witness for the Church.

Whereas it is the couple that provide not only the matter (their respective persons) but also the form (their matrimonial consent) of the sacrament, they are thus considered as the couple

minister of their own marriage.

c. Expansive Nature:

While all the other sacraments that are administered one at a time in one and the same person, and herein ends as a consummated reality, marriage that is actualized in a man and a woman (a couple) usually expands itself naturally into the added reality of children (a family).

It is only in marriage that a man and a woman become “pro-creators”, i.e., bringing into the world other persons through a potential shared therewith by the Creator, and thus providing the Church with other subject recipients of all the sacraments.

B. MINISTRY:

A brief and simple over-view of ministry will certainly be of some help in knowing, appreciating and situating this reality permeating the life of the Church, in nurturing and building this. It would be in order to attend to this intent by looking into, first, its rather immediate understanding, second, its fundamental and causal origin that is Christ, and third, its ecclesial relevance.

a. Immediate Understanding:

The term “ministry” immediately says and implies service because the phrase “manus mittere” precisely means to extend a hand, to give help. A minister wherefore is someone to renders or gives service to another/others.

Ministry is thus essentially altruistic even in its most simple and instant nature, and its pursuant finality. A minister therefore is ontologically a man for others. A minister for himself is a veritable and sad contradiction in terms.

Whereas no one can be one’s minister, when a man and a woman is considered to be the couple minister of their own marriage, this is because in truth they simply minister to one another precisely by their mutual self-giving to and accepting by each other’s person.

b. Christ:

Christian ministry in and for the Church founded by Christ cannot but have Christ Himself as its origin, its rationale, and its pattern. For a Christian, there is but one way to serve, viz., to follow Christ who precisely came to serve as a priest to sanctify, as a prophet to teach, as a king to rule - the so called “tria munera” or threefold function of Christ.

With Christ as High Priest remaining as its pivotal reference causal figure, there appears to be an ongoing development in the concept and use of the term “ministry” as an Office and/or a function

among theologians and canonists. There was a time when premised on their ordination to the Sacred Priesthood, Priests attended to ordained Offices (“officia”) and non-ordained functions (“munera”) as well. Then came the ecclesial practice of crediting non-ordained functions to the lay faithful by virtue of their baptism. Thereafter appeared the norm that lay faithful could be also deputized to certain Offices within a given time frame of ecclesial need, under certain circumstances.

Without even attempting to further inquire and profound on the progressive development of the understanding and attribution of Offices and functions, one thing remains certain: All these ministerial tasks are acted upon and duly fulfilled in the person of Christ (“in persona Christi”). And this in effect enjoins the minister to serve with Christian dignity, commitment and generosity. To do otherwise would be to shame Christ in whose name/person the Minister acts, to betray the Church for whose welfare he is ordained or deputized, to offend the People of God in whose service he comes into being.

#### c. Church:

Every ministry is an active participation in the mission and action of Christ, an effective extension and continuous actualization of His redemptive work, an orderly and complementary building of His Church-- the ordained, religious and lay faithful in their pilgrimage to the Kingdom.

Among all those reborn in Christ, among all Christian faithful, there is a fundamental equality of dignity in their person and action -- all contributing to the building of the Church of Christ according to their respective personal abilities, Offices and functions.

The greater consciousness of human dignity and the consequent better appreciation of human rights, the more pronounced quest for the emergence of truth and the more urgent demand for the observance of justice -- these are some of the more vibrant spirit of the times, the more common expectation not only in secular society but also in the ecclesial community. And this brings us squarely to the significance and implications of the Tribunal Ministry in the Church, particularly in contentious issues such as Marriage Nullity Cases.

#### C. MATRIMONIAL TRIBUNAL MINISTRY:

Having recalled the complex nature and the singular institution of marriage, and having reviewed the signal origin, connotation and finality of ministry, we now have the premises laid even but for a general and schematic consideration of the workings of a Tribunal categorically attending to matrimonial issues.

The content and intent of this whole submission is both unconcealed and unpretentious, viz., to introduce and interest specially clerics and religious in opting for the Matrimonial Tribunal Ministry -- which is richly rewarding, definitely not in terms of being well compensated for the admittedly difficult and tedious task, but rather for knowing how deeply appreciated is the

ministry on the part of people who are victims of untenable marriages and irregular unions.

For such a rather plain and simple purpose, it might be thus sufficient to consider but the following general points: First, preliminary considerations. Second, signal tripods. Third, key pointers. Fourth, decisive options. Fifth, practical observation. Needless to say, much more pertinent study, consequent reflection and resolute commitment are imperative to actualize Matrimonial Tribunal Ministry.

#### 1. Preliminary Considerations:

##### a. Anchorage:

Tribunals are juridical entities anchored or rooted in the kingly Office of Christ for the administration of justice in line with the governative authority of His Church endowed with legislative, executive and judiciary competence. The Tribunal Ministry is a concrete expression of the said judiciary authority of the Church. In other words, the ministry in tribunal is the service of justice by and through the Church.

##### b. Finality:

Ecclesiastical Tribunals are intended for the resolution of formal conflicts within and among the Christian Faithful, regarding subjective, objective and normative rights. Would that the service of Tribunals become unnecessary through the effort of mediation, conciliation or arbitration in resolving conflicts according to the offer of good will and the principle of equity -- only in matters however which are open to such relational moves as provided by law.

##### c. Trial:

A trial comes to fore in the presence of an established judicial inter-action, viz., there is a petitioner or claimant, there is a respondent or defendant, there is a judge to render a decision or a sentence. And the object of a trial is, one, to demand or vindicate a right or to declare a juridic fact, two, to imposed or declare a penalty.

##### d. Processes:

Processes are the normative step-by-step action to be observe in the resolution of cases through the a Trial made in a Tribunal. These organized and ordered series of acts is embodied in Procedural Law. In line with the nature of cases, there are two basic processes responding to the adjudication of contentious and penal cases decided upon through a Contentious and Penal Trials regarding respectively the definition of rights and/or facts and the imposition of penalties as above said.

##### e. Contentious Process:

Setting aside the Penal Process as well as the Oral Contentious Process, Matrimonial Tribunal Ministry follows the norms established for “Ordinary Contentious Process” with immediate and close reference to “Certain Special Process” in judicial response to the following matrimonial issues: One, Marriage Nullity Cases. Two, Separation of Spouses. Three, Presumed Death of a Spouse. Four, Ratified but not Consummated Marriage.

f. Matrimonial Tribunals:

As provided by General Law and as defined by Particular Law for the Philippines, Matrimonial Tribunals are established according to the number of Judges, according to the level of Instances, and according to the extent of Territory.

(1) Number of Judges:

As provided by law, Marriage Cases submitted and accepted for resolution by Documentary Process may be decided upon by a One-Judge-Tribunal with the required canonical qualifications.

As provided by law, Marriage Cases submitted and accepted for adjudication by Ordinary Process should be decided upon by a Three-Judge-Tribunal with the required canonical qualifications.

As provided by law, Marriage Cases submitted and accepted for adjudication by Ordinary Process may be decided upon by a One-Judge- Tribunal with the required canonical qualifications -- but subject to the expressed permission of the Catholic Bishops’ Conference of the Philippines and only as long as the Three-Judge-Tribunal could not be established due to obtaining circumstantial particulars.

(2) Level of Instances:

All the Archdiocesan, Diocesan and Vicariate Tribunals in the Philippines are for the definition of Marriage Cases in the First Instance —irrespective of whether they were submitted and accepted for resolution or adjudication through the Documentary or Ordinary Process.

In the Philippines, there is but one Tribunal of Appeals in the Second Instance which is the National Appellate Tribunal under the vigilative supervision of the Catholic Bishops’ Conference of the Philippines. In the event of a Third Instance, the case directly goes to the Roman Rota for resolution/adjudication.

The law requires that the Tribunal of Appeals in the Second Instance must be a Three-Judge-Tribunal with the required canonical qualifications —irrespective of whether the First Instance Tribunal is a Sole Tribunal of One Judge or a Collegial Tribunal of Three Judges.

(3) Territory:

Archdiocesan, Diocesan and Vicariate Tribunals have the prerogative to decide on Marriage Cases falling within their respective territorial coverage's as defined by universal law on jurisdictional competence, and in the First Instance as provided by particular law.

Interdiocesan or Regional Tribunals have jurisdictional competence to decide on Marriage Cases covered by their extended territorial coverage specially approved by the Apostolic See, and in the First Instance as provided by particular law.

The Appellate Tribunal of the Philippines (NAMT) of the Catholic Bishops' Conference of the Philippines (CBCP) that decides on Marriage Case in the Second Instance, is national in its territorio-jurisdictional competence as provided by particular law.

## 2. Signal Tripods:

There are some items pertinent to Marriage Tribunal Ministry that are threefold in concept or reality, and that are useful to take notice for easy understanding and ready reference:

### a. Tripod of Valid Marriage:

One: Canonical capacity to marry which is freedom from all matrimonial diriment impediments. Two: Integrality of matrimonial consent that means immunity from all vitiating endogenous and/or exogenous factors. Three: Observance of the canonical Form that refers to the standard public celebration of marriage with the five-figure minimum of a man, a woman, two common and one Official witnesses.

### b. Tripod of Rights:

One: Subjective right when viewed on the part of the holder thereof. Two: Objective right if considered from what it gives or confers. Three: Normative right when attending to the basis of what, why and how something (object) belongs to someone (subject).

### c. Tripod of Juridical Relationship:

A subject of a right (one) in relation to an object of the right (two) in relation to a law ruling between them (three). That is to say: Someone as having something according to law.

### d. Tripod of a Trial:

One: Petitioner with a claim or a plea. Two: Respondent with an answer or a reply. Three: Judge with a decision or a judgment.

### e. Tripod of Matrimonial Tribunal Ministry:

One: Matrimonial doctrine or the magisterium of the Church on marriage. Two: Matrimonial law or the canonical provision on the nature, finality and attributes of marriage based on the said magisterium. Three: Matrimonial Jurisprudence or the progressive understanding, interpretation and application of the said law.

### 3. Key Pointers:

While Canon Law has expressed and categorical provision on Tribunals be these for the definition of all contentious and penal cases or exclusively for the resolution of Marriage Cases, and while practically all ecclesiastical jurisdictions have the expected listing of the personnel and the seats of their respective Tribunals, it is evident that the mere existence of the said law and listing do not a Tribunal really make, much less make a Tribunal truly functional. Key pointers for the working actuality of Tribunals are the following:

#### a. Organization:

Key matters in the organization of a Marriage Tribunal in their order of importance are, first, qualified judicial and clerical staff, second, necessary office equipment's and materials, and third, specific place for Tribunal work.

Regarding the judicial staff, there is a minimum of three figures to have a working Tribunal, viz., a Judge (who may be the Judicial Vicar), a Defender of the Bond, a Notary. Without anyone of these office holders, there can be no operative Tribunal, there can be no valid process.

#### b. Management

Key figure in the management of a Matrimonial Tribunal is the Judicial Vicar, i.e., the deputy of the local Ordinary for judicial matrimonial issues. He must be a Priest with good reputation, 30 years old at least, with a degree of Licentiate or Doctorate in Canon Law.

When this Tribunal figure is overseeing the judicial ministry or the administration of justice in the place, he is a Judicial Vicar. When he hears a case usually presiding at its trial, he is s a Judge Auditor. When he writes or pens a decision, he is Judge Ponens.

#### c. Operation:

Key consideration in the operation of a Matrimonial Tribunal -with the above said organization in place and management in action -- is precisely to render it operational as much as possible, to make the Tribunal as active as possible.

The more signal benefits of this resolve are the following: One, the progressive growth of expertise in Tribunal Ministry. Two, the more publicly known becomes the functional reality of the Tribunal. Three, the more number of Marriage Cases are presented for Tribunal action. Four, the greater service of justice is given to God's People. Five, the more funds are gathered for

Tribunal expenses.

#### 4. Decisive Options:

The organization, management and operation of a Marriage Tribunal depend much on some rather basic resolves or decisive options -- under penalty of but wishful thinking and/or merely lip service to the dignity of human persons, to the complexity and delicacy of marriage, and to the imperative of the quest of justice and truth:

##### a. Local Ordinary:

Considering the scholastic requirement for the Judicial Vicar and for the Defender of the Bond -- both of whom should have a Licentiate or Doctorate in Canon Law -- the local Ordinary has to make the necessary resolve to send two candidates for the needed canonical studies.

The Defender of the Bond is in reality the advocate of the Church in protecting the marriage bond. While a lay person in possession of the needed canonical degree may be assigned this Office, a Priest has a distinct advantage in attending to this delicate task by reason of his added philosophical and theological formation over and above a purely canonical degree. Matrimonial law in particular has a good amount of significant philosophical and theological underpinnings.

##### b. Priest(s) Concerned:

Experience teaches that the above candidates for canonical studies should be well attentive to their personal attitude towards, interest in and aptitude for Canon Law. Otherwise, while they could acquire the desired canonical degrees, this would not serve neither in their canonico-ministerial growth nor in their self-fulfillment.

There are a good number of Canon Lawyers. But few are the actual practitioners of Canon Law, and fewer still are the Tribunal Ministers.

##### c. Commitment

A licentiate or even a doctorate in Canon Law is but simply the potential premise of Marriage Tribunal Ministry, merely the realistic basis for the degree holders to commit themselves to service in the Marriage Tribunal. In other words, the tenure of such academic degrees simply enable those concerned to, one, understand better matrimonial law, two, know well matrimonial jurisprudence and, three, acquaint themselves well with procedural law.

Truth to tell, these three branches of imperative knowledge for actual Tribunal Ministry, are not studied in the ordinary Seminary Curriculum, and are not even focused subject matters in the acquisition of the standard canonical degrees.

#### 5. Practical Observation:

The ordained Priesthood is essentially for the exercise of the ordained ministry particularly in terms of the administration of the sacraments and the preaching of the word. But not exclusively so.

Tribunal Ministry as an expression of the Kingly Office of Christ the High Priest is also attributed to and affiliated with the ordained Priesthood.

Truth: This is a ministry that actually begs for ministers. Reason: There is so much work to do and there are so few workers. Conclusion: There is much room for more Tribunal Ministers assured the of lasting gratitude and genuine appreciation on the part of the lay faithful they served and brought back to the sacraments, returned back to the embrace of Mother Church.

#### C o n c l u s i o n :

There are thousand of marriages held all over the country. There are several hundreds of Bishops, Priests and Deacons officially witnessing to these marriages all over the land. There are many hundreds of marriages that fail for one reason or another, nationwide. But there are exactly no more than 13 working Tribunals all over the nation.

There are certified laws that rule marriages. There are abundant jurisprudential principles developed by the Church across the centuries. There are innumerable magisterial pronouncements for the triumph of justice demanded by human dignity and consequent human rights.

The marked paucity if not utter absence of really existing and truly functioning Matrimonial Tribunals is clearly a strong and clear argument against all the above actions and actuality, canonical and doctrinal affirmations.

+O . V. CRUZ , DD  
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