

# NOTES ON THE LEGAL-PASTORAL INTEGRATION OF ECCLESIASTICAL MATRIMONIAL VERDICT

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## Summary

The mission of the Church cannot do without justice, truth, and mercy. These are the guiding values of the daily activity carried out in the courts where marriage annulment proceedings are heard. In addition to technical competence, a correct understanding of *the* pastoral *munus* is necessary, which links the service provided in the tribunals with other pastoral activities in the Church. The integration between canonical judicial pastoral care and family pastoral care provides systematic accompaniment on the issue of marriage. Unfortunately, some agents who work in this context use procedural form to serve the application of justice in the Church. Magistrates are invited to develop their technical *munus* by treating each case validly and lawfully, in full harmony with the pastoral *munus* intrinsic to the ecclesiastical office they exercise, with a view to a sentence that respects both the formal dimension of the procedural rite and the particularity of each situation brought before the court.

## Keywords

Canon law. Matrimonial nullity and pastoral challenge. Ecclesiastical legal decision.

## Summary

1. Introduction. 2. The legal-formal elements of the ecclesiastical sentence. 3. From form to substance: the ecclesiastical sentence as legal-pastoral discernment and integration. 4. Canonical judicial pastoral care integrated into marriage. 5. *Norma missionis* as the key to integration between law and pastoral care. 6. Accompanying, discerning, and integrating marital fragility in continuity with the judicial service in the magisterium of Pope Francis. 7. Final note. References

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# 1.INTRODUCTION

The verdict or sentence, within the scope of judicial activity, constitutes a specific *duty* of ecclesiastical judges<sup>2</sup>. Pope Francis recalls three dimensions of the office of ecclesiastical judge: the human profile, which corresponds to maturity, serenity, and the ability to study in depth all acts and elements of judgment; the judicial aspect, which requires legal and theological knowledge, combined with technical expertise that enables impartial judgment, while at the same time possessing the kindness of a shepherd of souls; and the pastoral dimension in exercising the office of judging with a true spirit of service and pastoral charity, imitating the Good Shepherd, who heals wounded sheep<sup>3</sup>. These three characteristics allow for the proper exercise of *the* ecclesiastical *munus* entrusted to judges. In cases of matrimonial nullity, when legitimately issuing a sentence, after technical and reasoned discernment that respects the free conviction of their conscience to form moral certainty<sup>4</sup>, the judge decides on the existence or non-existence of the matrimonial bond.

A sentence declaring the marriage union of a couple null affirms the non-existence of the bond from the constitutive act due to the presence of a diriment impediment, a defect of consent, or an inadequate canonical form. Even while affirming that the marriage never existed, it is always necessary to respect and protect the natural obligations arising from that relationship, especially regarding offspring. Conversely, if the judgment concludes that the marital bond exists, the parties remain united by the valid

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<sup>2</sup> The sentence belongs to the hermeneutic context of legal action. As Arroba describes: *"legal action is not aimed at resolving disputes but at ascertaining legally qualified situations, through the verification of relevant facts on which they are based. This implies that the legal correctness of the decision depends on how much it conforms to the law, in the questio iuris, and conforms to the truth, in the questio facti, because one is in possession of formal recognition, but only if the facts on which the existence of that right depends are true."* ARROBA CONDE 2016, 178.

<sup>3</sup> Cf. FRANCISCUS PP., Allocutio: *Ad omnes*, January 24, 2014, 89-90.

<sup>4</sup> Cf. can. 1608 §3; art. 247 §4, DC.

celebration of the marriage. Once declared valid, the party cannot legitimately enter a new marital relationship while the other spouse is alive. In any of the above solutions, it is essential that the sentence be reasoned and the arguments understandable and useful for subsequent discernment and ecclesial integration. This perspective makes it possible to expand the conclusion of the judicial process as a pastoral activity resulting from the collaboration of all the operators of the ecclesiastical court who cooperated directly for the success of the case.

It is the responsibility of family ministry to devote itself to marriage preparation and family accompaniment, especially in the early years of marriage. It must also cooperate with judicial ministry, which acts more directly in the preparation of the case and in accompanying the procedural phases. This mutual collaboration enables the integration of the legal response and the pastoral response, allowing for the assimilation of the legal-formal elements of the sentence, the methods of appeal, and the sentence as an instrument of discernment and legal-pastoral integration, in addition to the understanding of the elements that make up a valid celebration of marriage and the procedural aspect.

In this way, it is possible to reflect on the various family situations, whether those in which the marriage has been declared valid and has already constituted a new conjugal reality, or those in which the sentence has declared the bond null and void. In the latter situation, it is very important to pay close attention to the preparation for the new marriage so that it is valid and fruitful. Therefore, the judicial sentence in matrimonial cases is neither the last nor the only answer but must be part of the Church's broad effort to protect the family. *"Despite the many signs of crisis in marriage, 'the desire for a family remains alive, especially among young people, and motivates the Church'" (AL 1).*

## 2. THE LEGAL-FORMAL ELEMENTS OF THE ECCLESIASTICAL SENTENCE.

The Pio-Benedictine code defines a sentence as "*legitima pronuntiatio qua iudex causam a litigantibus propositam et iudiciali modo pertractatam definit*"<sup>5</sup>. Current canon law includes the rules governing judgments in the section entitled "pronouncements of the judge" (*ex* cann. 1607-1618)<sup>6</sup>. Canon 1607 of *the CIC* does not provide a definition, but rather a distinction between final judgments and interlocutory judgments in cases dealt with by the courts. The former is a definitive pronouncement by the judge that decides the main issue presented to the court; the latter deals with an incidental case connected with the main one, which can be resolved by means of a sentence or decree (*ex* can. 1587-1591; art. 217-228, *DC*)<sup>7</sup>.

Regarding cases of matrimonial nullity, *MIDI* innovates in relation to the sentence by derogating from the requirement of a double sentence according to<sup>8</sup>. It was Pope Benedict XIV who, in 1741, instituted the requirement of two sentences declaring the nullity of marriage so that the parties would be free to contract a new marriage<sup>9</sup>. In 2015, Pope Francis, in promulgating the new wording of canon 1679, determined that the parties

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<sup>5</sup> Can. 1868 §1, *Codex*.

<sup>6</sup> The same title also provides for judicial pronouncement by decree (*ex* can. 1617-1617). The legislation for the Eastern Churches contains similar provisions in can. 1290-1301 of *the CCEO*.

<sup>7</sup> This distinction is reflected in art. 246 of *the DC*. Eastern legislation contains the same provision as Latin law (*ex* can. 1290, *CCEO*).

<sup>8</sup> Arroba presents five aspects of the context of the reform that apply directly to the judicial decision: 1- discerning the conscience of the faithful; 2- connection between discernment and integration of the person into the community; 3- the value of synodality; 4- valuing the technical defense of the parties and the defender of the bond; and 5- speed and simplification, without renouncing the principle of legality, guaranteed by the priority and qualified dedication of operators. ARROBA CONDE 2017, 62-64.

<sup>9</sup> "*§11. Instructo autem in hunc modum iudicio, si secunda Sententia alteri conformis fuerit, hoc est, si in secunda, aequae ac in prima, nullum, ac irritum matrimonium iudicatum fuerit, et ab ea Pars, vel Defensor pro sua conscientia non crediderit appellandum, vel appellationem interpositam prosequendam minime censuerit: it shall be within the power and discretion of the spouses to contract a new marriage.* BENEDICTUS PP. XIV, *Dei Misericordia*, 38.

may remarry after a declaratory sentence of marriage nullity becomes enforceable (if it has not been appealed or the appeal is deserted)<sup>10</sup>. This change equated the sentence of marriage nullity with any other type of sentence issued by the ecclesiastical court.

In this sense, the final judgment on the merits decides the substantive right claimed in the initial petition and puts an end to the matter submitted to the court after analysis of the acts and evidence constituted in search of *favor veritatis*<sup>11</sup>. Arroba clarifies that the judgment is "*a coherent set of statements of facts proven in the process and proposed by the judicial authority as justification for its pronouncement*"<sup>12</sup>. The pronouncement of the sentence is a formal act in which the judge decides, based on moral certainty defined *ex actis et probatis* (*ex can. 1608*), on the petition presented by the author of the cause. The judge cannot refuse to issue the sentence according to the prescribed rite (*ex can. 1457 §1*). Canon law provides that the judge enjoys free conviction and appreciation of the elements legitimately constituted in the case file to

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<sup>10</sup> The requirement for a double sentence as a means of ensuring legal certainty required the defender of the bond to appeal the decision and, if he failed to do so, the appeal had to be made by the judicial authority itself in order to avoid continuing uncertainty: "*sin autem contra Matrimonii validitatem Sententia feratur, Defensor inter legitima tempora appellabit adhaerens Parti, quae pro validitate agebat; cum autem in iudicio nemo unus fit, qui pro Matrimonii validitate negotium insistat, vel si adsit, lata contra eum Sententia, iudicium deseruerit, ipse ex officio ad superiorem iudicem provocabit.*" BENEDICTUS PP. XIV, *Dei Miseratione*, §8, 37. Canon 1986 of the 1917 Code of Canon Law imposed an absolute obligation on the defender of the bond to appeal within the established time limit against the first sentence declaring nullity. After the second conforming sentence of matrimonial nullity, he could then appeal or not according to his conscience (*ex can. 1987, Codex*). With the end of the requirement of a double conforming sentence, the defender of the bond retains the right of appeal, even in shorter proceedings before the bishop (*ex can. 1687 §3*).

<sup>11</sup> "*The purpose of the process is the declaration of the truth by an impartial third party, after the parties have been given equal opportunity to present arguments and evidence within an adequate space for discussion. This exchange of views is normally necessary so that the judge can know the truth and, consequently, decide the case according to justice.*" BENEDICTUS PP. XVI, *Allocutio: Ad Tribunal*, 2006, 136.

<sup>12</sup> ARROBA CONDE 2017, 59.

form, in conscience, moral certainty and judge the merits of the case. Therefore, three characteristics identify the sentence: moral certainty, motivation, and the stable and definitive nature of the judicial decision.

Moral certainty was accepted in the context of canonical procedure from the 19th century onwards<sup>13</sup>. This terminology was included in the Pio-Benedictine code as a constitutive element for the formation of judicial pronouncements in sentences<sup>14</sup>. The 1917 *Codex* did not contain a definition of moral certainty, and it was left to Pope Pius XII, in 1941, to clarify that moral certainty is that which "*escluda ogni dubbio prudente, ossia*

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<sup>13</sup> The oldest source in which the expression *moralem certitudinem* was used in a canonical procedural context is considered to be from 1880, in an Instruction of the Sacred Congregation for Bishops and Regulars concerning criminal proceedings: "*In order to determine the guilt of the accused, it is necessary to have legal proof, which must contain elements that demonstrate the truth, or at least induce a moral conviction, removing any reasonable doubt to the contrary.*" SACRA CONGREGATIO EPISCOPORUM ET REGULARIUM, *Instruction for ecclesiastical courts on the economic procedure in disciplinary and criminal cases involving clerics*, June 11, 1880, in ASS, XIII (1881), n. 16, 329. In 1840, it was determined that when dealing with issues relating to impotence, the moral certainty of impotence should be verified, together with the physical evidence. The instruction stated that: "*an adsint signa physice certa impotentiae deducta ex conformatione partium, aut ex aliquo vitio quod apparere poterit. An adsint signa quae moralem certitudinem inducant impotentiae, et quatenus existant, quae sit huius impotentiae causa, utrum sit impotentia perpetua, insanabilis, ac praecedens matrimonium; an signa impotentiae sint dubia vela equivoca.*" SACRA CONGREGATIO CONCILII, *Instruction*, August 22, 1840, in P. GASPARRI (ed.), *Codicis Iuris Canonici fontes*, VI, Rome, 1932, n. 4069, 349. In 1883, the expression *certitudo moralis* was used to determine the causes that investigated the impediment to the bond. Moral certainty was included as a criterion in the analysis of the existence or non-existence of the bond in the face of uncertainty about the death of the first spouse: "*quod si testes sive de visu, sive de auditu haberi non poterunt, considerandae erunt circumstantiae omnes in facto concurrentes, et diligenter ponderandae, ut videatur, utrum ex illarum complexu exsurgere possit moralis illa certitudo quae necessaria est ut iudicium proferatur.*" SUPREMA SACRA CONGREGATIO SANCTI OFFICII, *Instruction: to Patriarchs, Archbishops, and Bishops of Eastern Rites in matrimonial cases*, June 20, 1883, in P. GASPARRI (ed.), *Codicis Iuris Canonici Fontes*, IV, [Rome], 1926, n. 1076, 406.

<sup>14</sup> Cf. can. 1869 §1, *Codex*.

*fondato su ragioni* positive"<sup>15</sup>. Given the importance of the issue, the following year, the pontiff specified that:

"on the positive side, it is characterized by the fact that it excludes any well-founded or reasonable doubt and, thus considered, it differs essentially from the aforementioned quasi-certainty; on the negative side, it leaves open the absolute possibility of the contrary, and thus differs from absolute certainty. The certainty we are now discussing is necessary and sufficient to pronounce a sentence"<sup>16</sup>.

For those who exercise the judicial function, it should be clear that absolute certainty is not necessary to issue a judgment. Arguing that absolute certainty is indispensable for motivating a decision would make the administration of justice unfeasible and create a situation of impunity. Similarly, in the opposite sense, mere probable certainty is not enough to issue a secure and convincing judgment. As St. Alphonsus states: "*per operare bene, vi bisogna la certezza morale: dove la sola probabilità non dà abbastanza fondamento di operare bene*"<sup>17</sup>.

The existence of a doubt to be resolved is the very object to be investigated and proven. It is the duty of the judge to resolve the controversy by seeking the truth in accordance with the succession of acts *prescribed* by law. If a tension arises between truth and justice in the *inter-procedural* process, it is essential that this doubt be resolved by resorting to the honesty of the actions (evidence, statements, expert reports). Fallacious arguments that tarnish the sense of truth to the detriment of the corruption

<sup>15</sup> PIUS PP. XII, Allocutio: *Ad praelatos auditores*, 1941, 424.

<sup>16</sup> PIUS PP. XII, Allocutio: *Ad praelatos auditores ceterosque officiales et administros tribunalis S. Romanae Rotae necnon eiusdem tribunalis advocatos et procuratores*, October 1, 1942, in *AAS*, XXXIV (1942), n. 1, 339-340.

<sup>17</sup> LIGUORI 1890, 422.

of justice must be resolved during the proceedings so as not to condition the moral assessment of the facts or result in an unjust sentence<sup>18</sup>. With the end of the preliminary phase, based on justice and truth, and with the full cooperation of all parties involved in the proceedings, it is the responsibility of each judge

"to arrive, if possible, at moral certainty about the truth or existence of the fact, since this certainty is an indispensable requirement for the judge to be able to pronounce the sentence: first, so to speak, in his heart, then giving his vote in the meeting of the judging panel"<sup>19</sup>

Each judge, in conscience, is free to form his own conviction based on objective data contained in the acts and evidence that enable him to establish, in his mind, the moral certainty to decide the case (*ex can. 1608 §1*)<sup>20</sup>. Moral certainty is neither the conclusion of a probability of facts nor the arithmetic response of the prevalence of the amount of evidence presented in court. In this sense, it is necessary to avoid any decision based

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<sup>18</sup> The judge may intervene *ex officio* to prevent an unjust decision (*ex can. 1452*). "*An activity which, upon verification of the facts, ensures the unique nature of each case, the participation of its protagonists in joint responsibility, the confrontation of instances according to the alleged motivations, and which matures in a reasonable time a decision that can avoid conflicts between internal and external jurisdiction.*" ARROBA CONDE 2018, 4-5.

<sup>19</sup> IOANNES PAULUS PP. II, Allocutio: *Ad Tribunalis Sacrae Rotae Romanae*, February 4, 1980, in *AAS*, LXXII (1980), n. 5, 175.

<sup>20</sup> "*Moral certainty is objectively founded on the legal and factual reality, made evident by the results of all the evidence and means of proof, rising to the level of full or sufficient proof, depending on whether it is a matter of their free evaluation (can. 1608, §3).*" STANKIEWICZ 2005, 239. "*Do not confuse the concepts referring to the principle of the judge's free conviction and the free assessment of evidence, which are a step forward in understanding judicial activity with greater guarantees of truth and fairness, and the undefined contours of the so-called 'intimate conviction' which, on the contrary, constitutes a risky derivation towards arbitrary assessment, which could end up threatening the requirement of legality in the exercise of judicial power.*" ARROBA CONDE 2017, 71.



on probabilistic certainty<sup>21</sup>, prevailing certainty<sup>22</sup>, or probable opinion<sup>23</sup>. With this conviction, which is not an intimate conviction, the judge motivates the decision objectively, avoids arbitrariness, and ensures that the arguments used are useful for ecclesial discernment. This is the understanding reaffirmed by Pope Francis in the reform promoted with *MIDI*:

"Art. 12. To achieve the moral certainty required by law, it is not sufficient for the evidence and indications to be of prevailing importance, but any prudent positive doubt of error, in law and in fact, must be completely excluded, even if the mere possibility of the contrary is not excluded"<sup>24</sup>.

Therefore, moral certainty is a degree of positive and probable conviction based on the records and evidence. If the court does not obtain this degree of conviction *ex actis et probatis*, it must rule contrary to the

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<sup>21</sup> "Probability alone is not enough to decide a case." IOANNES PAULUS PP. II, Allocutio: *Ad Tribunalis*, (1980), n. 6, 176.

<sup>22</sup> The prevailing certainty was accepted in 1970 by the ecclesiastical courts of the United States and Australia when they imposed "on the judge the obligation to rule in favor of the party for which the prevailing evidence militates, even if this evidence only determines a probability." GROCHOLEWSKI 1997, 4 21. Commenting on this situation, Izzi concludes that "in order to achieve the necessary moral certainty, it is not sufficient for the evidence and clues to be of prevailing importance, but it is necessary that any prudent positive doubt of error, both in law and in fact, be completely excluded, although the mere possibility of the contrary is not excluded." IZZI 2011, 255.

<sup>23</sup> In the case of opinion, "there is a lack of full assent and firm adherence of the intellect to the truth of the known object due to the fear that the truth lies in the opposite part, which is considered not only possible, but also probable and plausible. The debatable judgment, therefore, is not pronounced on the basis of the intellect's full assent to the truth of one part of the contradiction, but on the basis of a choice of the will that orients itself toward one of the parts, since it judges it to be probable, plausible, that is, as a good." STANKIEWICZ 2005, 238.

<sup>24</sup> Art. 12, RP.

plaintiff's claim. The only exception is when the law establishes the favor of in cases of doubt, as is provided for marriage (*ex cân. 1608 §4; 1060*). In cases of matrimonial nullity, only with moral certainty of nullity is it possible to declare the non-existence of the bond. In the new *brevior* process, it is up to the diocesan bishop, after consulting the instructor and the assessor, to form, in his free conviction, the moral certainty of nullity. If he is not convinced of this, he must refer the case to the competent ecclesiastical court to be dealt with in the ordinary rite (*ex cân. 1687 §1*).

The second characteristic of every definitive sentence is the motivation<sup>25</sup>. This is directly connected to the moral certainty obtained *ex actis et probatis*, since the decision is an application of the law to the facts (*tam in iure quam in facto*). It is the judge's responsibility, using argumentative instruments "*senza muoversi con la pigrizia intellettuale di chi ricorre solo al dettato legislativo e alla sua abituale applicazione*" (*without resorting to the intellectual laziness of those who rely solely on legislative dictates and their habitual application*)<sup>26</sup>, to write the grounds for his decision and present a direct justification with the concrete reasons present in the case file. It is essential that the arguments of law and fact on which the decision is based be stated. If the judgment does not contain these elements, it will be vitiated with remediable nullity<sup>27</sup>, since the reasoning

"is the place where the indispensable link between the Decision and the Truth is created, to which that decision

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<sup>25</sup> "Under the Benedictine Code, only the Supreme Tribunal of the Apostolic Signatura could issue judgments without expressing the reasons for the decision; Canon 1605 §1 established [...] The current Code does not recognize this authorization previously granted to the Apostolic Signatura." CABERLETTI 2011, 126-127. "Motivating a sentence is the act by which the judge accompanies the parties by the hand along the entire path of the trial, leading them through all those outcomes, documentary or otherwise, which, placed one after the other, have allowed him to reach a decision according to truth and justice and with the moral certainty required by law." GRAZIOLI 2016, 88.

<sup>26</sup> ARROBA CONDE 2018, 6

<sup>27</sup> Cf. cân. 1611, 3; 1612 §3; 1622, 2, CIC. Artt. 250,2; 253 §3; 272, 2, DC.

must correspond, since the dichotomy between procedural truth and substantive truth is unacceptable in any legal system—and in canon law in particular—given that the purpose of the canonical process—but not only – is not so much to provide a solution to the dispute that complies with the law, but that such a solution is based on the ascertainment of the truth of the historical facts adduced by the parties: it is precisely in the reasoning that the judge gives an account of the existence of legal evidence, of the value to be attributed or not attributed to each of the pieces of evidence gathered during the preliminary investigation, as well as of the facts potentially inferring a different outcome"<sup>28</sup> .

The reasoning given in the sentence is also useful and helps the faithful to freely understand their situation in the Church<sup>29</sup> . This does not mean, in matrimonial cases, that the spouses agree with the sentence declaring the existence of the bond, but that they consciously understand the argumentation and logic used<sup>30</sup> . A well-reasoned sentence is a fundamental step towards the reintegration of those couples in an irregular situation in ecclesial life .<sup>31</sup>

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<sup>28</sup> GRAZIOLI 2016, 88.

<sup>29</sup> *"The objectivity that gives rise to moral certainty requires the application of rules of evaluation that are, in turn, objective and, as such, can be accepted and analyzed in their value by all participants in the process."* ARROBA CONDE 2017, 70.

<sup>30</sup> *"The decision may also form the basis for a new common future and not be limited to extinguishing ex-auctoritate a matter that is now in the past."* GHERRI 2012, 74.

<sup>31</sup> *"The quality of the reasoning lies in a wise and accurate combination of the overall assessment of the case and the assessment of the evidence, applying the objective assessment criteria indicated by law to each of the main and secondary facts that have emerged [...] If the overall assessment is based on an analytical evaluation, the reasoning in fact must not neglect the effort to offer detailed explanations of the legal reasons why each of the facts was considered morally certain or not."* ARROBA CONDE 2016, 183.

When drafting the sentence, it is essential to include the expository part and the dispositive part, since the reading of the sentence reveals the parties' right of defense, the evidence, and the objective analysis of the elements acquired in the course of the action. The expository part includes the legal and factual grounds on which the decision is based (*ex can. 1611, 3; art. 250, 2 DC*); the dispositive part contains the final decision, which summarizes the entire dialectical argumentative process, which is the concrete answer to the question presented to the court. These two parts complement each other and form a single body, together with the personal details, date, place, and signatures of the judges and notary<sup>32</sup>.

<sup>33</sup>The motivation *in iure* contains a direct indication of the law applied to the specific case. This is not a matter of simple legal positivism, but rather a technique that relates abstract law to concrete reality. In addition to the law, the motivation of the law is supported by jurisprudence and ecclesiastical teaching. All these elements describe the Church's understanding of the subject matter under consideration. This requires the judge to make a technical-pastoral effort to present the Church's position in a systematic and summarized manner. He must avoid the automatism of repeating the same arguments in a generic way in his sentences, as if it were only a formal precept to be fulfilled<sup>34</sup>.

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<sup>32</sup> Cf. can. 1612.

<sup>33</sup> *"The quæstio Iuris takes precedence, since the Law is the key to interpreting the facts, inasmuch as the moral certainty reached by the Judge in order to pronounce judgment, even though it matures in a free conviction, must be objective, that is, based on the truth of the Law, the authoritative measure of his judgment on the facts."* G. CABERLETTI, *La motivazione*, 138.

<sup>34</sup> *"The necessary familiarity that those who perform this service must acquire with the principles of sound canonical hermeneutics, which go far beyond mere normative exegesis and the usual judicial syllogisms of forensic practice, as well as the easy recourse (often superficial and very irrelevant) to self-styled presumptions or jurisprudential precedents [...] The effort to grasp the irrepartibility and uniqueness of each case should rather increase the commitment to distinguish it from other precedents, without excluding deciding in a different and even opposite way to previous ones, as long as they are adequately justified."* M.J. ARROBA CONDE 2017, 66.

In matrimonial cases, accurate motivation *in iure* is very important. This is the space in which the explanation of ecclesial norms helps the faithful to form their own conscience and to confront the Church's proposal regarding marriage with the reality in which they are inserted. With this understanding, the party begins to form a conviction that leads to a responsible attitude toward their own marriage.

The motivation *in facto*, which follows the explanation *in iure*, details the elements revealed and constituted throughout the process. This is the appropriate place in the sentence for a complete and detailed analysis of the value of the evidence<sup>35</sup>. The direct mention of interrogations, documents, and expert reports constitutes an interesting path of discernment and respect for historical reality in tune with the truth of the facts. The breadth of the elements assessed, weighed, and evaluated by the court allows the reasonableness of the decision to be accepted by the recipients in a convincing manner and not only by the authority. The judge must, therefore,

"apply and interpret the Law, which expresses a 'rationis ordinatio', declared, however, in the speculative order of essential and general principles, to respond to a *causa petendi*, which is embodied in historical facts, specific to a particular existence. The work of the Judge is to mediate between the Law and human experience, in order to establish the truth in the protection of people's rights"<sup>36</sup>.

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<sup>35</sup> It is necessary to "unravel and scrutinize the elements of the case under examination with the utmost care, without rushing into conclusions based on the naive illusion that the general provisions of the law and the positive rule to be applied can be considered almost geometric solutions." ARROBA CONDE 2017, 65.

<sup>36</sup> CABERLETTI 2011, 133.

The operative part contains the decision<sup>37</sup>. Canon law establishes a different procedural rite for issuing the sentence depending on whether the judgment is monocratic or collegial. In the first situation, the judge writes the sentence, respecting the necessary consultations imposed by the regulations (*ex can. 1610, §1*). In the case of a collegiate court, the president of the collegiate court must establish the date, time, and place of the meeting. All judges who make up the collegiate court must submit their conclusions regarding the merits of the case and the reasons of law and fact in writing, which must be kept secret. In the council chamber, the judges express their *votum pro rei veritatem*. The presiding judge or rapporteur ( ) is the first to present his conclusions. During the discussion, it is permissible to modify the initial conclusion reached by any judge. This must be recorded in writing, guaranteeing the judge's free conviction. At the end of the council chamber, all judges sign the form and deliver it to the notary. If the judges have not been able to reach a decision in the first discussion, they may extend the time necessary to make the final decision by one week or request an integration of the preliminary investigation by means of *dilata et compleantur acta*.

The presiding judge guides the work to formulate the operative part of the sentence with an absolute majority of votes (*ex can. 1609; art. 248, DC*). The reporting judge must draft the sentence and submit it for approval by each judge of the college before publishing it definitively within one month after the decision of the case, unless the collegial court, in the presence of a serious cause, decides otherwise (*ex can. 1610 §3*). The content of the vote, the voting score, and the content of the opinions remain secret.

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<sup>37</sup> Cf. canons 1609 §3; 1612, §3. Art. 248 §3; 250, 2 DC. "The Church imposes on the ecclesiastical judge the obligation to judge *ex aequo et bono* [...]. The current code has embraced the requirements of mercy and humanity in view of a gentler, more understanding justice [...] the judge is for them the good Shepherd who consoles those who have been hurt, guides those who have erred, recognizes the rights of those who have been wronged, slandered, or unjustly humiliated. The judicial authority is thus an authority of service, a service that consists in exercising the power entrusted by Christ to his Church for the good of souls." PAULUS PP. VI, Allocutio: *Ad romanam*, 1973, 99-100.

The judgment defines the controversy presented in the complaint and responds to each of the plaintiff's claims, setting out the reasons *in iure quam in facto*<sup>38</sup>. If the operative part does not define the controversy, even partially, then the judgment is irremediably null and void<sup>39</sup>. If it does not contain the reasons, the judgment is null and void but can be remedied<sup>40</sup>. The judgment must determine the obligations, the manner of fulfilling them, and the procedural costs.<sup>41</sup>

The third characteristic of a judicial decision on the merits is the stable and definitive nature of the decision. Stability is closely linked to *the favor veritatis* obtained through the mutual collaboration of all those who participated in the proceedings<sup>42</sup>, while definitiveness concludes the jurisdiction of the court that issued the decision and makes it appealable. Once issued and notified, the sentence remains unchanged, as it can only be corrected by the court that promulgated it, by means of a decree, when there is a calculation error, a material error in the transcription (whether in the operative part, the statement of facts, or the parties' petition), or when it is necessary to insert the date, place, and signatures of the judge and notary.

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<sup>38</sup> It is forbidden for a judge to rule outside the terms of the dispute. A similar normative provision is established in Brazilian law in articles 141 and 492 of CPC/15.

<sup>39</sup> Cf. can. 1620, 8.

<sup>40</sup> Cf. can. 1622, 2.

<sup>41</sup> Cf. can. 1611.

<sup>42</sup> During the process, it is necessary to "help each person to place their subjective truth in a relationship of constructive and self-critical verification with respect to other essential elements of verification, such as those that come from the subjective truth of the other spouse." ARROBA CONDE 2017, 67. "A symmetrical and equal collaboration in the search for truth, avoiding positions of mere conflict." E. DI BERNARDO, *Processual Models*, 50. "The educational nature of the process therefore transforms the spouses into co-litigants because it requires them to always engage in dialogue with the reality of themselves, offering an authentic image of their actual conjugality, regardless of the procedural role they assume." BUSELLI MONDINI 2009, 535.

As it is a collegial decision, it requires the signature of all members of the college (*ex can. 1616*)<sup>43</sup>.

Due process protects the stability of the sentence. The quality of the decision is also linked to the preparation and qualification of ecclesiastical judges, since those who apply canon law must know it and study it in depth, so as to ensure that the judicial sentence is part of the ecclesial process of welcome, discernment, and integration. Thus, judicial activity is not disconnected from the missionary dimension of the Church, which requires qualification, preparation, commitment to observing substantive and procedural canon law, evaluating evidence, and promoting ecclesial communion.

The firmness of the decision is a qualified guideline for pastoral accompaniment, especially in matrimonial cases that directly affect the *status* of the faithful in the Church<sup>44</sup>. Specifically in judgments that recognize the nullity of marriage, there is the possibility of imposing, in the operative part of the judgment, a veto on remarriage. This is a power of the collegial tribunal (*ex art. 45, 8 DC*). The judicial *veto* is mandatory in cases of absolute impotence and perpetual mental incapacity; it is optional in cases of fraud and simulation (*ex art. 251, DC*)<sup>45</sup>. The veto is lifted by the ordinary of the place where the new marriage is to be celebrated. This prior consultation is not *ad validitatem*, but it is up to the bishop to lift the veto that prevents the lawfulness of the new celebration. Finally, the sentence must contain a

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<sup>43</sup> In a collegial tribunal, it is not sufficient for the sentence to be signed only by the president and the notary: "*utrum, ad normam can. 1874, § 5, et can. 1894, n. 3, nullitatis vitio laboret sententia lata a tribunali collegiali, et subscripta tantum a praeside tribunalis et notario. Resp. Affirmative.*" PONTIFICIA COMMISSIO AD CODICIS CANONES AUTHENTICE INTERPRETANDOS, Responses to specific questions: *on the sentence (canons 1874 and 1894)*, July 14, 1922, in *AAS*, XIV (1922), 529.

<sup>44</sup> "*The judicial ministry must take charge of the conclusion of annulment proceedings, with further accompaniment in continuity with the judicial service provided.*" ARROBA CONDE 2016,75.

<sup>45</sup> Cf. can. 1058.



warning to the parties about the natural obligations arising from the union they had and indicate the ways in which it can be challenged (*ex can.* 1614).

The canonical sentence contains specific elements that individualize the Church's two-thousand-year-old practice and, at the same time, ensure technical parity with the judicial sentences issued by the civil courts of various countries. From a comparative perspective, Brazilian civil procedural law recognizes three types of judicial pronouncements: the sentence, the interlocutory decision, and the order (*ex art.* 203, CPC/15). The sentence, which is the subject of this study, is the instrument that "ends the cognitive phase of the common procedure and extinguishes the execution" (<sup>46</sup>). The conclusion of the proceedings may be with a judgment that resolves the merits (*ex art.* 487, CPC/15) by arguing and defining the factual and legal grounds presented in the initial petition or with a final judgment that does not resolve the merits if:

"I - dismissal of the initial petition; II - the proceedings remain at a standstill for more than one (1) year due to negligence on the part of the parties; III - failure to perform the acts and steps incumbent upon him, the plaintiff abandons the case for more than thirty (30) days; IV - verification of the absence of prerequisites for the constitution and valid and regular development of the proceedings; V - recognizing the existence of peremption, *lis pendens*, or *res judicata*; VI - verifying the absence of legitimacy or procedural interest; VII - accepting the allegation of the existence of an arbitration agreement or when the arbitral tribunal recognizes its jurisdiction; VIII - ratifying the withdrawal of the action; IX - in the event of the death of a party, the action is

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<sup>46</sup> Art. 203 §1, CPC/15.

considered non-transferable by legal provision; and X - in the other cases prescribed in this Code"<sup>47</sup>.

The institution of peremption, recognized in Brazilian civil law, is also provided for in canon law (*ex* cann. 1520-1523). Canon law determines that, after six months without the parties taking any procedural action, provided there is no impediment, the court shall decree peremption and conclude the case. In cases of matrimonial nullity, before declaring peremption, the court must warn the parties of the need to take action in the proceedings (*ex* art. 146, *DC*). If peremption occurs, *ipso iure*, the proceedings are terminated and the case files remain, which may be used when the case is resubmitted to the court.

Brazilian civil procedural law requires that the judge ascertain the facts and judge with impartiality, promptness, and legality. These principles are valid for both canonical and civil judgments. Both judgments are important because they recognize in the same person the identity of a believer, a member of the Church, and a citizen, a member of a country. Having received the judicial decision, the parties may file an appeal. In the canonical universe, the means of challenge can be a nullity suit, an appeal, restitution *in integrum*, and a new proposal of the case<sup>48</sup>.

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<sup>47</sup> Art. 485, CPC/15.

<sup>48</sup> The preparatory commission for the current code proposed at the beginning of its work on the discipline of impugnation: "Habentur antea *impugnationes sententiae*, quae ponuntur hoc ordine magis logico: 1) querela nullitatis; 2) apelatio. Dein *impugnationes rei indicatae*, quae sunt: 1) restitutio in integrum contra rem iudicatam manifeste iniustam, 2) tertii oppositio, contra rem iudicatam quae tertium laedere potest; 3) causar retractatio, contra duplicem conformem sententiam in causis de statu personarum." PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Catus studiorum* "De iure processuali recognoscendo," in *Communicationes*, II (1970), 187.

### 3. FROM FORM TO SUBSTANCE: THE ECCLESIASTICAL SENTENCE AS DISCERNMENT AND LEGAL-PASTORAL INTEGRATION

Pope Francis, in his first address to the Tribunal of the Roman Rota in 2014, asked officials to "*mentre svolgete il lavoro giudiziario, non dimenticate che siete pastori! Dietro ogni pratica, ogni posizione, ogni causa, ci sono persone che attendono giustizia*" (while carrying out your judicial work, do not forget that you are pastors! Behind every case, every position, every cause, there are people who await justice)<sup>49</sup>. In addition to legal technique, you must act as a shepherd by recognizing in each case a personal and family reality that awaits justice and providing qualified discernment that collaborates in the integration of the parties into the community of faith<sup>50</sup>. The canonical process, in addition to being a succession of acts *iure praescripta*, is an instrument that seeks to ascertain the facts based on truth<sup>51</sup>. It is necessary to follow due process, deliberate on the case (*ex can. 1609*), draft the sentence with a logical and coherent structure (*ex cann. 1610-1612*), and publish it (*ex cann. 1614-1615*). As Turnaturi describes: "*the process is form and not dogma of faith*"<sup>52</sup>.

The procedural form is at the service of the application of justice in the Church. Magistrates are invited to develop their technical *munus*, by treating each case validly and lawfully, in full harmony with the pastoral *munus*, intrinsic to the ecclesiastical office they exercise<sup>53</sup>, with a view to a

<sup>49</sup> FRANCISCUS PP., Allocutio: *Ad omnes participes*, 2014, 90.

<sup>50</sup> In reaching its decision, the adjudicating panel should avoid: "*individualistic approaches and dismissive resolutions on marital failure of a bourgeois nature; it is necessary from a pastoral perspective to address in the sentence the question of moral and civil obligations towards the other party and, above all, towards the offspring, especially with regard to educational and material support obligations.*" ARROBA CONDE 2018, 18.

<sup>51</sup> "*The trial remains an instrument at the service of truth, without betraying the centrality of the person.*" A. CATTA, *Definitività della decisione giudiziale*, 327.

<sup>52</sup> TURNATURI 2008, 667.

<sup>53</sup> Every ecclesiastical office is exercised for a spiritual purpose (*ex can. 145 §1*).

sentence that respects both the formal dimension of the procedural rite and the particularity of each situation brought before the court. Canon law establishes that the magistrate enjoys free conviction to form moral certainty *ex actis et probatis*. This is not an intimate, subjective path or one linked to the particular interests of the magistrate or the parties, but one based on the case files. The formation of free conviction must be explained coherently in the reasoning behind the judgment in such a way as to help the parties understand the legal reasoning adopted by the judge. As Di Bernardo states,

"the canonical process, presenting itself as a true legal instrument for the resolution of conflicts according to justice, through the application of ecclesiastical law in controversial situations, unlike other procedural models, underlies an ecclesiology of communion that represents the expression of the essence and charismatic mission of the Church"<sup>54</sup>.

In cases of matrimonial nullity, in addition to a dignified reception and procedural accompaniment, it is necessary that the arguments contained in the sentence be well-founded and provide elements for further discernment and integration of that family reality within the Church<sup>55</sup>. Only a correct understanding of the value of the sentence will allow the parties to assume their own responsibility and embark on a path of conversion<sup>56</sup>.

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<sup>54</sup> DI BERNARDO 2016, 44.

<sup>55</sup> "The decision must be adequately motivated, and the judge must not overlook elements that—having emerged from the preliminary investigation—seem to contradict the final thesis." CATTA 2017, 283.

<sup>56</sup> "The judgment, since it is an act of intellect and will, requires rationality as its essential characteristic, and the potestas of the judge, which is expressed through the act of will, can only be based on reasonable grounds." CABERLETTI 2011, 123.

The sentence has legal and pastoral importance. The content and elements must be articulated with clarity by the magistrate. Prudence is necessary in the analysis of evidence and technical ability to mediate conflicts and apply justice. Magistrates, in seeking the truth, provide a pastoral service; by respecting the principle of speed, they guarantee the course of justice with equity<sup>57</sup>, since delays in judicial proceedings can cause harm to the faithful and disbelief in the legal activity of the Church<sup>58</sup>; by protecting individual rights, they promote justice. All these elements result in the text of the sentence and demonstrate the quality, or lack thereof, of the judicial protection provided by an ecclesiastical court.

It is essential that the sentence be the result of the dialogical rationality developed during the inter-procedural phase. There may be extreme situations that make it difficult or impossible to prove the nullity of a marriage, such as the case of an undocumented refugee who cannot present witnesses to testify about the facts narrated. This is not a failure of the procedural system, but rather a lack of greater commitment on the part of the ecclesiastical court in following up on these cases, because even if the marriage cannot be declared null and void due to lack of evidence, the sentence must reflect all the efforts made in court to ensure that justice is done.

The sentence must consider the unique reality of each marriage in the context of ecclesial dynamism that seeks to understand the totality of the family relationship in all its dimensions. To fully accompany the fragility of

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<sup>57</sup> "The obligatory recourse to equity shortens the distance between the law, as a general provision that protects the consistency of the legal system and equality, and the justice of the specific case, which realistically protects the centrality of the person, thus reaffirming the inseparable union between justice and mercy, whose inseparable companion is truth." ARROBA CONDE 2018, 152.

<sup>58</sup> Pope Gregory IX mentions the principle of procedural speed linked to equity: "*Iurgantium controversias celeri sententia terminare et aequitati proculdubio convenit et rigori.*" GREGORIUS PP. IX, Decretalium Gregorii Papae IX, Lib. II, Tit. XXVII, Cap. II, 380.

marriage, it is essential that the pastoral service carried out in ecclesiastical courts ensure qualified discernment and<sup>59</sup>. As St. Paul VI states:

"The pastoral style, the inspiration of charity, the spirit of understanding aim precisely at this. Not the law for the sake of the law, therefore, not judgment for the sake of judgment, but law and judgment at the service of truth, justice, patience, and charity, virtues that form the essence of the Gospel and that must characterize today more than ever the figure of the ecclesiastical judge."<sup>60</sup>

Many people who seek matrimonial nullity are wounded and suffer from the failure of their union. This feeling at the beginning of the process cannot be the same at the end. The sentence has an objective and direct relevance in the formation of the couple's conscience. The content of the sentence must be articulated in such a way that the text is useful for subsequent pastoral discernment. The sentence must be "*compressed as a decision certainly of authority but the result of an effective verification based on common rules of assessment*"<sup>61</sup>. In this sense, the pastoral function of the sentence respects two conditions: *quaestio facti* (search for truth)<sup>62</sup> and *quaestio iuris* (fidelity in the interpretation of the norm)<sup>63</sup>. This binomial is the key to legal

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<sup>59</sup> "Judicial discernment on matters of interpersonal and family relations carried out in the process, given the guarantees that (in abstract terms) derive from the interpersonal nature of the process, is an extraordinary contribution to helping people continue in the review of their lives, in conversion, and in a more responsible integration into the life of the Church." ARROBA CONDE 2018, 152.

<sup>60</sup> PAUL VI, Allocution: To the Roman Rota, January 28, 1971, in *AAS*, LXII (1971), 140.

<sup>61</sup> ARROBA CONDE 2017, 8.

<sup>62</sup> "To unravel and scrutinize with the utmost care the elements of the case under examination, without rushing into conclusions based on the naive illusion that the general provisions of the law and the positive norm to be applied can be considered almost geometric solutions." ARROBA CONDE 2017, 65.

<sup>63</sup> "The reasons in *Iuri* constitute the essential premise of the Judge's pronouncements, which must conform to the truth and the Law." CABERLETTI 2011, 31. "Those who perform this service must acquire the

interpretation for the next step, which is integration into the community. As Grazioli describes:

"To assert that the Church's response to the needs of couples in difficulty must necessarily involve a declaration of nullity without a real adversarial process, without the impartiality of a judge, without a rational assessment of the historical facts, without a properly reasoned decision, without the possibility of appealing against errors in *procedendo vel in iudicando*, risks conveying a concept of pastoral care that is empty of content: it is not by lowering procedural guarantees that an adequate service is rendered to the truth of the sacrament of marriage to which couples, and especially those in greater difficulty, are entitled"<sup>64</sup>.

The binomial *quaestio facti* and *quaestio iuris* distinguishes judicial discernment<sup>65</sup>. The very structure of the sentence provides for a description of the case, an explanation *in iure*, a reference *in facto*, and an operative part. All these elements come together and form a hermeneutic of the marital

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*necessary familiarity with the principles of sound canonical hermeneutics, which go far beyond mere normative exegesis and the usual judicial syllogisms of forensic practice, as well as such easy recourse (often superficial and very irrelevant) to self-styled presumptions or jurisprudential precedents."* ARROBA CONDE, 2017, 66. Therefore, the *parte in Iure* "consists first and foremost of reference to substantive law, identifying the normative content to be applied in the specific case; it must also consider the elements of evidence, with particular attention to their value (for example, in cases of marriage annulment due to incapacity, the principles of Christian anthropology must be invoked); the *quaestio Iuris* is also relevant to the principles relating to the means of evidence, indicating which are necessary in the case under consideration and the criteria by which they should be evaluated." CABERLETTI 2011, 135.

<sup>64</sup> GRAZIOLI 2016, 342.

<sup>65</sup> It would be reductive to consider the decision as a mere syllogism whose sole purpose was to apply a chain of logical-formal rules. ARROBA CONDE 2017, 61.

situation submitted for judgment. Both the affirmative judgment, which declares the nullity of the bond by recognizing that the marriage is non-existent for the Church, and the negative judgment, which declares the validity of the bond, must be substantiated.

It is not easy to overcome the historical reality in which there was consensual truth on the part of one of the spouses and no consensus on the part of the other, since the experience lived by one of the spouses was one of total self-giving. A ruling declaring the nullity of the marriage does not erase the memory experienced by the parties, but it can help, especially the spouse who was the victim of an abusive relationship, to rebuild their life with greater lucidity and human, emotional, and spiritual maturity.

A negative decision declares that the marriage was validly celebrated. The parties must face the reality of marital failure, assume their own responsibility, and seek ways to integrate themselves into ecclesial life<sup>66</sup>. If they are already living in a second union, there will be a disparity between the legal plan and the actual reality, since the second union will continue to be illicit until the death of the spouse to whom the party is bound by the sacred bond of marriage. Even in those cases where the evidence collected is insufficient to form moral certainty about the nullity of the bond, it is possible to

"offer reasonably objective guidelines for the further discernment of the faithful regarding the failure of their marriage, allowing them to focus on the main points on which to make the necessary repentance and center the due reparation, counting on the accompaniment of the

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<sup>66</sup> The discernment contained in the sentence "*represents not only the culmination of a shared process (which, as a result, is convincing even to the recipients themselves, who could thus avoid any appeal), but also becomes, at the same time, the starting point on which to base the acquired (and new) awareness of one's own experience and role within the ecclesial community, from which no one is ever excluded, even in the case of a pro validitate decision.*" CATT 2017, 283.



Church, in whose life the faithful are called to participate"<sup>67</sup>.

Regardless of the content of the operative part, the sentence has the fundamental role of helping the couple to understand their own relational history. By understanding the reasons for the existence or non-existence of the marriage bond, they will be able to discern and seek integration into the community<sup>68</sup>. Faced with the wounds of marital failure, the Church proposes the path of welcome, equity, justice, and mercy:

"If God stopped at justice, He would cease to be God; He would be like all men who invoke respect for the law. Justice alone is not enough, and experience teaches us that appealing only to it risks destroying it. For this reason, God goes beyond justice with mercy and forgiveness"<sup>69</sup>.

Integration must respect the concrete situation of each family<sup>70</sup>. To this end, it is necessary to overcome the legalism applied in pastoral care, which reduces all accompaniment to the permission or prohibition of communion. The sacramental dimension is fundamental, and therefore only personalized accompaniment can help people who are suffering from

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<sup>67</sup> ARROBA CONDE 2015, 282-283.

<sup>68</sup> "On matters of interpersonal and family projection accomplished in the process, given the guarantees that (in abstract terms) derive from the interpersonal nature of the process, it is an extraordinary contribution to helping people continue in the review of their lives, in conversion, and in a more responsible integration into the life of the Church." ARROBA CONDE 2018, 8.

<sup>69</sup> *Misericordiae vultus* 21.

<sup>70</sup> "A judicial decision in the name of canonical equity must be of assistance to other pastoral workers involved in accompanying individuals and families. It is therefore necessary to draft the text of the sentence in such a way that it is also useful for subsequent pastoral discernment." ARROBA CONDE 2018, 152.

marital breakdown to celebrate the sacraments of reconciliation and the Eucharist with due dignity<sup>71</sup>. By combining the collaboration of the judicial pastoral ministry, from the preparation of the case, with the family pastoral ministry, which integrates all dimensions of family accompaniment and promotes acceptance in the ecclesial community, it will be possible to build a path of integration of the faithful into the community of faith.

#### 4. CANONICAL JUDICIAL PASTORAL CARE INTEGRATED WITH MARRIAGE

The mission of the Church cannot do without justice, truth, and mercy. These are the guiding values of the daily activity in the courts where marriage annulment proceedings are heard. In addition to technical competence, a correct understanding of *the pastoral munus* is necessary, which links the service provided in the courts with other pastoral activities in the Church.

The integration between canonical judicial pastoral care and family pastoral care provides systematic accompaniment on the issue of marriage. Unfortunately, some agents working in ecclesiastical tribunals still need to understand the pastoral function of their service, since all those involved in the process must experience each phase with seriousness and ecclesial and social commitment. *"In order to remain a judicial activity, the process, in taking on pastoral needs, must resort to interpreting the norms according to the general principles of law applied with equity (c. 19)"*<sup>72</sup>. This perspective is based on the evangelization of families and, at the same time, enables a new understanding of the service offered by ecclesiastical structures. It is urgent to integrate forces in all ecclesial spheres and levels that enable:

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<sup>71</sup> "The Eucharist requires integration into the one ecclesial body. Those who approach the Body and Blood of Christ cannot at the same time offend that same Body by causing scandalous divisions and discrimination among its members." AL 186.

<sup>72</sup> ARROBA CONDE 2018, 7.

"improving the activity from a technical and ethical point of view, favoring the adaptation of the discipline to the needs of each Tribunal and increasing association in the study, updating, and exchange of experience, activating a judicial pastoral ministry united with family pastoral ministry"<sup>73</sup>.

The combination of law and pastoral care is an instrument at the service of the Church that enables the construction of a sincere dialogue with the couple. The evangelization of families is urgent in times and cultures that relativize the inalienable values in defense of life and human dignity<sup>74</sup>.

The conversion of structures must also take place within the family, as a domestic church. The conciliar magisterium teaches that in the family, *"Chiesa domestica, i genitori devono essere per i loro figli i primi maestri della fede e secondare la vocazione propria di ognuno"*<sup>75</sup>. In order for the Church to enter into and dialogue with the plurality of existing realities, it must review the means used from initial catechesis to the accompaniment of families. It is generally easier to offer a devotional or sacramental pastoral ministry that is detached from ecclesial and family commitment. Without proper catechetical formation, the values assimilated by the new generations are diverse and sometimes contrary to the Gospel.

Therefore, the conversion of pastoral structures requires an ecclesial conversion that intensifies evangelization and formation, renounces all rigorism or relativism in judging and penalizing the faithful who find themselves in irregular family situations, and builds paths of mercy and

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<sup>73</sup> ARROBA CONDE 2009, 225.

<sup>74</sup> "The Church must instill in families a sense of ecclesial belonging, a sense of 'us' in which no member is forgotten." *Relatio Synodi* 2015, n. 90.

<sup>75</sup> LG 11.

forgiveness that allow for the full acceptance and integration of all into the Church. This mutual conversion of the domestic church and the institutional Church allows for an effective understanding of *the norma missionis* as the key to integration between law and pastoral care. From this perspective, it is possible to conceive of Pope Francis' teaching on welcoming, discerning, and integrating marital fragility<sup>76</sup>.

## 5. NORMA MISSIONIS AS THE KEY TO INTEGRATION BETWEEN LAW AND PASTORAL CARE

The hermeneutical perspective that enables the correct application and integration between law and pastoral care is the *norma missionis*. Jesus Christ entrusted his disciples with the mission to baptize and teach all nations. This missionary mandate is the foundation of law in the Church as a regulator of relations within a community of faith. This is the *raison d'être* of pastoral action as a perpetual *munus* until the end of time<sup>77</sup>. A proper integration between law and pastoral activity makes it possible to continue and update the missionary sending to all nations. As Pope Francis teaches:

"Evangelization obeys Jesus' missionary mandate: 'Go, therefore, and make disciples of all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Spirit, teaching them to observe all that I have commanded you' (Mt 28:19-20). These verses present the moment when the Risen One sends his disciples to preach the Gospel in every time and place, so that faith in him may spread to every corner of the earth"<sup>78</sup>.

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<sup>76</sup> See Chapter VIII of *AL*.

<sup>77</sup> Cf. *Mt* 28:16-20.

<sup>78</sup> *EG* 19.

The law "*is the object of justice*"<sup>79</sup>. According to St. Thomas Aquinas, the law is linked to justice, which is the virtue par excellence. What is just is not the indiscriminate application of the law, but the resulting balance between norm and fact<sup>80</sup>. Law, in addition to being linked to justice, is also linked to mercy. As Pope Francis reminds us: "*two dimensions of a single reality that gradually develops until it reaches its climax in the fullness of love*"<sup>81</sup>. Therefore, it is possible to establish a connection between law, justice, and mercy.

Pastoral care is "*the exercise of the Church's motherhood [...] capable of rediscovering the maternal womb of mercy. Without mercy, little can be done today to insert oneself into a world of 'wounded' people who need understanding, forgiveness, and love*"<sup>82</sup>. Rediscovering the value of pastoral care as an exercise of motherhood is allowing the Church to continue proclaiming the Word of God, being a sign of mercy for the whole world. With the help of Pope Francis, it is possible to establish a connection between pastoral care<sup>83</sup>, motherhood, and mercy.

The integration between law and pastoral care bears the fruits of justice and the maternal love of the Church, acting with mercy towards all her sons and daughters, including those who are scattered. Adding the adjective canonical to the concept of law and the adjective Catholic to the notion of pastoral care specifies the core of the correct ecclesial experience

<sup>79</sup>S t. THOMAS AQUINAS, *STh*, II-II<sup>a</sup> q. 57, a. 1, response.

<sup>80</sup> For example, the crime of the poor person who steals out of necessity. According to St. Thomas Aquinas: "*If, however, the necessity is so urgent and evident as to require immediate assistance, such as things that are within reach, as when a person is in such danger that he cannot be helped otherwise, then one may satisfy his need by tampering, either openly or secretly, with the property of others. And this is not properly theft or robbery.*" S. THOMAE AQUINATIS, *STh*, II-II<sup>a</sup> q. 66, a. 7, I reply.

<sup>81</sup> *Misericordiae Vultus* 20.

<sup>82</sup> FRANCISCUS PP., *Allocutio: Inter Apostolicum in Flumen Ianuarri occasione XXVIII Diei Mundialis Inventutis: Inter cenam cum episcopis Brasiliensibus*, July 23, 2013, in *AAS*, CV (2013), 694.

<sup>83</sup> "*The term 'pastoral' is also used in a much broader sense, to describe the totality of ecclesial or Christian activity belonging to the nature and supernatural mission of the People of God, so that pastoral care would not be reserved to the clergy but would be the responsibility of all the baptized.*" BAURA 2003, 164.

of canon law in light of *the norma missionis*, which guides and precedes the *norma fidei* and the *norma communionis*. This correct understanding enables everyone to be co-responsible in evangelizing action, which is the goal of pastoral life within the Church<sup>(84)</sup>.

The *norma missionis* highlights the sacramental character of the Church as a visible sign of the proclamation of the Gospel and the administration of the sacraments. The two-thousand-year history of the Church dialogues with the plurality of peoples, languages, cultures, and traditions as "*strumento dell'intima unione con Dio e dell'unità di tutto il genere umano*" (instrument of intimate union with God and of the unity of all mankind)<sup>85</sup>. It is in this context that the need for norms within the Church arises in view of the proclamation of the word of God according to the missionary mandate given by Jesus<sup>86</sup>. This is the *raison d'être* of canon law, which is based on *the norma missionis* with a view to the *norma fidei* and the *norma communionis*.

The *norma fidei* refers to the word of God and the authentic teaching of the Church. The Second Vatican Council recalls that "*sacred tradition and sacred Scripture constitute a single sacred deposit of the word of God entrusted to the Church*"<sup>87</sup>. The *norma missionis* contains the *norma fidei* since the Church proclaims the Gospel as announced by Jesus Christ. If the Church were unfaithful, altered or misinterpreted the *norma fidei*, it would incur the formation of an identity and mission different from that entrusted to it by Jesus Christ. To avoid distortions, canonical law ensures the ecclesiastical

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<sup>84</sup> "Evangelizing, in fact, is the grace and vocation proper to the Church, her deepest identity. She exists in order to evangelize, that is, to preach and teach, to be the channel of the gift of grace, to reconcile sinners with God, to perpetuate the sacrifice of Christ in the Holy Mass, which is the memorial of his death and glorious resurrection." EN 14.

<sup>85</sup> LG 1.

<sup>86</sup> "The reason why Christ established his Church is the mission of proclaiming the Gospel to every creature so that all, by consciously adhering to it, may be saved (cf. Rom. 10:17)." GHERRI 2012, 40.

<sup>87</sup> DV 10.

magisterium and the degrees of adherence of the faithful to the teachings of the Church<sup>88</sup>.

The *norma communionis* guarantees the effective participation of the faithful in the life, death, and resurrection of Jesus through the sacraments. After receiving the explicit proclamation of the Gospel, the baptized Christian takes on in the first person the missionary mode that Jesus transmitted to his disciples. Lay men and women, consecrated men and women, and ordained ministers are linked in the mutual experience of ecclesial communion. Each one assumes their own responsibility according to their participation in the mystical body of Christ, which is the Church.

The *norma missionis* is the whole of ecclesial life and "*allows us to see canon law as an instrument that facilitates Christian life*"<sup>89</sup>. It is necessary to clarify that the law is at the service of the gift of Grace as an instrument that aims to safeguard fraternal communion within the Church. "*Canon law continually reminds the Church that it is immersed in the world, in time and space, and that it suffers the consequent pressures and conditioning of these factors*"<sup>90</sup>.

The law produced by the Church is continually renewed because of its mission<sup>91</sup>. The Church is a body of charity in which love is the supreme law and all the baptized are committed to assuming their own responsibility for evangelization. The axiom *ius sequitur vitam* expresses the constant need to update canon law<sup>92</sup> according to the circumstances of place and time, without renouncing the *depositum fidei*. This characteristic directly affects

<sup>88</sup> Cf. canons 747-755.

<sup>89</sup> ARROBA CONDE 2018, 2.

<sup>90</sup> JIMÉNEZ URRESTI *et al.* 1967, 16.

<sup>91</sup> A classic example was the Council of Jerusalem when the early Church met and decided that circumcision was not necessary to become a Christian. Cf. *Acts* 15. Another teaching was the method of collegiality for deciding important issues in the life of Christians. Cf. *LG* 23.

<sup>92</sup> "*The purpose of canon law is to order the life of the Church, without however imprisoning the mystery that is the Christian vocation, in its dual personal and communal dimension, which gives ultimate meaning to its existence.*" ARROBA CONDE *et al* 2017, 49-50.

canon law, which is constantly adapting to the society in which the Church lives without renouncing historical resources of ecclesial legal dynamics such as dispensation (*ex can. 85*), *epikéia*<sup>93</sup>, equity (*ex cann. 19; 221 § 2*)<sup>94</sup>, and customs (*ex cann. 5; 23-28*).

As members who share the same faith, Christians are called to perceive the dynamic cry of life and to break with rigorist or lax attitudes that are not in accordance with the word of God. The strict tendency stiffens the structures of the Church, stifles the breath of the Holy Spirit, and promotes an abusive form of legislation with the aim of immobilizing pastoral reality to avoid responses consistent with the signs of the times, constituting an abuse of ecclesiastical authority. This practice demonstrates insecurity and an inability to act as a pastor and guide the People of God. At the other extreme are the laxists, who do not recognize the need for laws in the Church and propagate that free personal decision, without institutional ties, is sufficient for ecclesial communion. These errors generate great evil in the Church. It is indispensable that in the formation of ecclesiastical law:

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<sup>93</sup> "*Epicheia is a part of justice taken in a general sense, as a 'certain kind of justice', to use Aristotle's words [1. Cit.]. Therefore, it is a subjective part of justice. And the term justice applies to it in a more eminent degree than to legal justice: in fact, the latter is regulated by epicheia. Therefore, epicheia is like a higher rule of human acts.*" ST. THOMAS AQUINAS, *STh*, II-II<sup>a</sup> q. 120, a. 2, response. St. Alphonsus explains that epicheia applies both to laws made by men and to the formulations of natural law: "*haec epikeja non solum locum habet in legibus humanis, sed etiam in naturalibus, ubi possit ex circumstantiis a malitia denudari.*" DE' LIGUORI 1879, 182.

<sup>94</sup> "*Canonical equity has, in its essence, the meaning of openness to that particular history of which every christifidelis is the bearer. In other words, it prevents the legal system of the Church from becoming an arsenal of logical tools, albeit perfect but cruelly sharp as a blade, nourishing and reviving it with factuality. Canonical equity is the great portal open to the outside world in the (otherwise compact) wall of codification, or, in any case, of written law; through that portal, custom, society, and history enter to oxygenate the interior.*" P. GROSSI, *Canonical Equity: Between Code and History*, in FUMAGALLI *et al* 2015, 292.



"in addition to what may derive from a better understanding of the founding core of the norma missionis, the action of the legislator must be understood in adequate harmony with a *sensus fidelium* consistent with the Gospel, while in the interpretation of the law, the *receptio legis* by the recipients is a necessary step"<sup>95</sup>.

In addition to the ecclesiological dimension, it is necessary to understand the law in the light of theology. There is "*a theology in canon law and a theology of canon law. Canon law does not exist and cannot be conceived without theological content, which is part of ecclesiology*"<sup>96</sup>. The canonical order must not be or become an obstacle to the Church's salvific mission, but an instrument at the service of evangelization.

The Church, as an institution, must be attentive to the conversion of structures to update language, customs, style, and methods of evangelization<sup>97</sup>. Every pastoral conversion, to be authentic, must be faithful to the missionary mandate given by Jesus. The goal is to ensure that the Church continues to be a prophetic voice, in solidarity with the wounds of the world, dispenser of the sacraments, and expression of God's love for all humanity. In other words, "*for a more appropriate transmission of the faith, a cultural mediation capable of coherently expressing the dual fidelity to the Gospel of Jesus and to contemporary man appears necessary*"<sup>98</sup>. Canon law fits into this context, as it can help to better organize ecclesiastical structures.

By applying this understanding to marriage and the family, it is possible to renew ecclesial structures to ensure dignified listening, serene welcome, discernment of the concrete reality of each marriage, and full integration so that all can celebrate and rejoice in ecclesial communion. The

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<sup>95</sup> ARROBA CONDE N.d., 4.

<sup>96</sup> JIMÉNEZ URRESTI 1967, 30.

<sup>97</sup> Cf. EG 27.

<sup>98</sup> *Instrumentum laboris* 2015, N. 79.

documents produced by the synods on the family, *MIDI*, *MITIS*, and the apostolic exhortation *AL* result in a symbiosis between law and pastoral care, since the proposal brought about by the synodal path is not limited to documents and norms, but to paradigms that enable a new mentality of welcome, discernment, and integration into the ecclesial community. To make this journey effective, it is essential to recognize that

"the family of the baptized is by its nature missionary and increases its faith in the act of giving it to others, first of all to its children. The very fact of living family communion is its first form of proclamation. In fact, evangelization begins in the family, in which not only physical life is transmitted, but also spiritual life"<sup>99</sup>.

In the process of reconstructing canonical complexity within the Church, intrinsically linked to the mission<sup>100</sup>, it is possible to implement a canonical judicial pastoral care of marriage and the family as a new model of systematic accompaniment of families. A Church made up of evangelized and evangelizing families<sup>101</sup> becomes a community of communities that provides a correct understanding of marriage and the family, safeguarding Christian values. The evangelical ideal of marriage and family remains an inalienable value and makes it possible to welcome even those who are experiencing a crisis in their marriage or who are in an irreversible situation of marital breakdown.

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<sup>99</sup> *Relatio Synodi* 2015, N. 93.

<sup>100</sup> "Canon law is therefore a human instrument to facilitate three requirements: the centrality of the good of persons in the liberating light of the Gospel, consistency with the Gospel that identifies the community, and effectiveness in carrying out the mission." ARROBA CONDE 2018, 143.

<sup>101</sup> "As the domestic church, parents must be the first teachers of the faith for their children and support each one's vocation." LG 11.

Special pastoral attention should be given to Catholics who are living in de facto unions and to those who are divorced and civilly remarried. All these faithful are recipients of the Church's merciful care. Excluding, labeling, and classifying Catholics living in irregular situations as second- or third-class Christians is a way of aggravating their unhappiness and placing heavy burdens on the backs of these people who suffer bitterly from a failed love story<sup>102</sup>. To address these situations, any strict or lax interpretation of canon law must be avoided. It is necessary to integrate the concrete reality of human frailty with the merciful grace that the Church offers to all the faithful.

Both a strict and a lax attitude prevent the link between the Gospel and life<sup>103</sup>. By demanding unscrupulous observance of the norm, without considering the concrete situation in which the faithful live, there is a threat of imposing a strictness that subjugates adherence to the Gospel based on fear of God and fear of eternal damnation. This approach does not promote the formation of the faithful's conscience and propagates the idea that it is enough to follow rites and norms, even if they cause unhappiness or are at odds with reality, to ensure that the person is doing God's will. Conscience becomes subordinate to scruples, rituals, and pre-established forms that require neither reflection nor commitment to oneself and others; it is enough to follow a certain norm that is considered perfect.

Those who do not fit the predetermined norm are labeled and excluded from the stronghold of those who consider themselves righteous and who, without questioning, end up adhering to an ideology supposedly based on the Gospel that does not necessarily promote forgiveness, mercy,

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<sup>102</sup> Cf. *Mt* 23:4.

<sup>103</sup> St. Alphonsus consolidated a sure middle way between rigorism and laxity. Pope Pius IX, in proclaiming him a Doctor of the Church, recognized that: "*obscura insuper dilucidavit, dubiaque declaravit, cum inter implexas Theologorum sive laxiores sive rigidiores sententias tutam straverit viam, per quam Christifidelium animarum moderatores inoffenso pede incedere possent.*" PIUS PP. IX, *Decretum urbis et orbis*, March 11, 1871, in *ASS*, 6 (1870-1871), 318.

and love of neighbor. Adherents of rigorism find security in the formality of acts and assume an individualistic stance in which it would suffice to comply with ecclesiastical precepts in order to live according to orthodoxy. Many consider themselves intellectuals and think they are living the Gospel radically. This way of being and acting creates division within the Church, as it gives rise to castes of "first-class" faithful who adopt a certain lifestyle, and faithful of other levels who must change their own lifestyle to fit into a pre-established framework.

The lax perspective is another dangerous extreme<sup>104</sup>. By promoting non-compliance, negligence, or relaxation of the norm, based on subjective or minimalist criteria, one risks relativizing the fundamental tenets of faith and emptying religious and moral meaning. Distorting the foundations of the Gospel to suit private interests is as serious as imprisoning people in an ideology that creates a perfect model of Christian life. Those who defend laxity take a permissive stance, devoid of community spirit, based solely on their own interests. Without the guiding parameters of faith, everything loses meaning. This rupture creates Christians who are uncommitted and irresponsible towards themselves and others.

No to rigorism, no to laxity. Yes to equiprobabilism, which is St. Alphonsus' moral proposal for Christian action in the face of the norm<sup>105</sup>. St. Alphonsus chooses the middle way as a constructive path for the

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<sup>104</sup> For St. Alphonsus, the lax attitude is more serious: *"There is no doubt that the strictest people do great harm with their rigor, just as the probabilists who follow the least probable known (which I do not consider probable, because then the law is morally promulgated) are the cause of the loss of many souls; and certainly there are more lax confessors than strict ones."* A. DE' LIGUORI, *Letters to a father of his congregation in the house of Pagani (March 28, 1767)*, in *Letters of St. Alphonsus Maria de' Liguori*, III, Rome, 1890, n. CLXXXV, 298.

<sup>105</sup> *«Alphonsian theology arises from listening to and welcoming the fragility of the most spiritually abandoned men and women. The Holy Doctor, trained in a rigorous moral mindset, converted to "benignity" through listening to reality."* FRANCISCUS PP., *Message on the occasion of the 150th anniversary*, available at URL: &lt;https://www.vatican.va &gt; (on 04/28/2021).

formation of conscience and maturity of faith<sup>106</sup>. He is a defender of freedom. His moral theology is based on pastoral practice. He starts from reality, without abandoning the fundamental tenets of faith, and insists that confessors be fair and help the faithful on the path to sanctification<sup>107</sup>:

"if the relapse arises from one's own fragility, without any other extrinsic voluntary cause, it is almost reckless to say that every relapse is indisposed [...] and we judge that to do otherwise is too harsh; and that the confessor, in doing so, would stray from the true spirit of the Church... and of the Lord..., and from the nature of the sacrament, which is not only judgment, but medicine... salutary"<sup>108</sup>.

Pope Francis affirms that "neither rigorism nor laxity are true. The Gospel chooses another path"<sup>109</sup>. It is necessary to follow the path of welcome, accompaniment, discernment, and integration. In this way, it becomes clear that *the norm missionis* is not reduced to a mere game of merits and judgments, but to a path of evangelization that brings the Word of God

<sup>106</sup> St. Alphonsus requested that the editorial review of his book not be entrusted to a strict theologian: "Once again, I recommend that you not give the book to some strict theologian (as most Dominicans are today) to review, because I am not of this opinion, but I hold to the middle way." A. DE' LIGUORI, *Letters to Mr. Giuseppe Remondini* (February 15, 1756), in *Letters of St. Alphonsus Maria de' Liguori*, III, Rome, 1890, n. IX, 20.

<sup>107</sup> "I hold my system to be so certain that here, in the diocese, I do not bear the confession of anyone who would deny absolution to a penitent who holds the aequae probabile judgment, or that judgment which is not certain but is doubted to be a little less probable." A. DE' LIGUORI, *Letters to Fr. Pietro Paolo Blasucci* (November 1768), in *Letters of St. Alphonsus Maria de' Liguori*, III, Rome, 1890, n. CCVII, 345.

<sup>108</sup> DE' LIGUORI 1879, 470-471.

<sup>109</sup> FRANCISCUS PP., *Address of Pope Francis at the opening of the ecclesial congress of the Diocese of Rome*, June 16, 2016, available at URL: &lt;[https://www.vatican.va/content/francesco/pt/speeches/2016/june/documents/papa-francesco\\_20160616\\_convegno-diocesi-roma.html](https://www.vatican.va/content/francesco/pt/speeches/2016/june/documents/papa-francesco_20160616_convegno-diocesi-roma.html)&gt; (on 10/06/2017).

to all peoples. Leaving behind preconceived notions, abandoning nostalgia, and breaking with permissiveness are attitudes that enable a comprehensive evangelization capable of illuminating people's lives without abandoning the way of the Gospel, which is the way of love.

Without fear of breaking with strict and lax perspectives, it is necessary to find a middle ground in which the Gospel is consciously accepted in the light of faith. The Church, applying this approach to marriage and the family, updates the message of salvation for all and recognizes that *"the family in God's plan is not a duty, but a gift, and that today the decision to enter into the sacrament is not something that is already given from the beginning, but a step to be matured and a goal to be achieved"*<sup>110</sup>. This discernment also includes accompanying people who live in irregular marriages, even if they are in an apparent state of sin. These faithful must also find in the Church an attitude of forgiveness and mercy. There is no sin so great that God's grace cannot forgive it. Regardless of the type of sin, it is important to live the faith with love, commitment, and dedication. Only in this way will it be possible to overcome sin, pain, and division. As Jesus said to the sinful woman: "Her many sins are forgiven, because she has shown great love"<sup>111</sup>.

Many in the Church feel they are heralds of truth and defenders of an abstract, normative, and imposing expression of faith. They forget that adherence to the Gospel is a daily response of love that moves human action in the right direction of the model that is Jesus Christ. We must learn from Jesus to deconstruct the rhetoric of the Pharisees<sup>112</sup>. He did not use fallacies to teach, but gave witness to his life as part of evangelization. The Church and its members must always remember that Jesus emphasized the

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<sup>110</sup> *Instrumentum laboris* 2015, n. 61.

<sup>111</sup> *Lk* 7:47.

<sup>112</sup> Cf. *Mt* 23:1-32.

importance of not succumbing to the temptation to judge others, but to put oneself in their place<sup>113</sup>.

The quality of welcome and accompaniment are concrete responses to the necessary conversion of ecclesial structures, which is based on *the norma missionis* as the most appropriate criterion for integrating canon law and pastoral care. The renewal of ecclesial structures is both a consequence of their missionary dynamic and necessary for maintaining prophecy and coherence with the Gospel. We must always be careful not to make structures rigid, because "*there are ecclesial structures that can condition evangelizing dynamism; equally, good structures are useful when there is a life that animates, sustains, and judges them*"<sup>114</sup>.

The Church, defender of the values of marriage and family, cannot abandon Christians who are in an apparent state of sin to their own fate. Pastoral action should not classify or judge people by creating structures that foster division within the Church. Every evangelizing practice enables the Church to keep

"its doors wide open to welcome the needy, the repentant, and not only the righteous or those who believe themselves to be perfect! The Church that is not ashamed of its fallen brother and does not pretend not to see him, but rather feels involved and almost obliged to lift him up and encourage him to resume his journey, accompanying him towards the definitive encounter with his Spouse in the Heavenly Jerusalem"<sup>115</sup>.

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<sup>113</sup> Cf. *Mt* 5:1-5.

<sup>114</sup> *EG* 26.

<sup>115</sup> FRANCISCUS PP., *Address at the conclusion of the Third Extraordinary General Assembly of the Synod of Bishops*, in L. BALDISSERI (ed.), *Pastoral Challenges to the Family in the Context of Evangelization*, LEV, Vatican City, 2015, 225-226.

By building a constant path of conversion of its structures in view of its mission, the Church offers a witness for the conversion of the faithful<sup>116</sup>. This path breaks with rigorist and laxist attitudes and ways of thinking by allowing the Gospel of love to enrich families and integrate the juridical and pastoral dimensions. Each particular Church, under the pastoral care of the diocesan bishop, must invest in the training of pastoral agents so that they are able to listen to the reality of people and do not presume to have all the answers ready-made.

Therefore, the *norma missionis*, interpreted as a link between the Gospel and life, ensures that the mission entrusted by Christ to his Church does not create a rupture between preaching and concrete life. With this understanding, it is necessary to deepen the ecclesial path that provides for accompanying, discerning, and integrating marital fragility in continuity with the judicial service proposed in the magisterium of Pope Francis.

## 6. ACCOMPANYING, DISCERNING, AND INTEGRATING MARITAL FRAGILITY IN CONTINUITY WITH THE JUDICIAL SERVICE IN THE MAGISTERIUM OF POPE FRANCIS

Accompanying, discerning, and integrating are the verbs that make up the title of the eighth chapter of *AL*. These three related attitudes constitute a path of closeness to those who experience marital fragility. *AL* does not deal directly with judicial service, but it is necessary to read the post-synodal exhortation within the broad synodal context that includes the promulgation of *MIDI* and *MITIS*. This method used by Pope Francis

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<sup>116</sup> “The mission determines the institutions of the Church, which is structured according to the building of the Kingdom of God in the world. Its ‘modus praesentiae’ are inseparable from this ultimate goal: to make present the event of salvation of which it is the bearer [...] The mission justifies the effort of inculturation that the Church, inspired by the Spirit, has believed necessary to implement, in time and space, in order to be faithful to its salvific essence.” ARROBA CONDE 1999, 186-187.



allows for the gathering of forces within the Church with the aim of ensuring comprehensive assistance to marriage and the family. By linking the pastoral and legal dimensions, based on theological data, it is possible to understand the logic proposed in Pope Francis' teaching. These are not competing realities, but perspectives that integrate and enable the accompaniment of all marital realities, discerning the concrete reality of each family.

The pedagogy offered in Pope Francis' teaching provides that pastoral accompaniment, carried out gradually, goes beyond the logic of spiritual direction in which the director guides the person being directed to enable a journey in which the accompanier, in dialogue with the person being accompanied, carries out a process of formation of conscience that enables discernment of the concrete reality in the light of the Gospel. For accompaniment, it is necessary to *"encourage the maturation of an enlightened conscience, formed and accompanied by the responsible and serious discernment of the Shepherd, and to propose an ever greater trust in grace"*<sup>117</sup>. There is no relationship of superiority or imposition of decisions. It is a matter of being present in the life of the other and providing fraternal sharing capable of listening, guiding, and reflecting without pretending to establish immediate answers. This journey begins with welcoming and allows for integration, which *"is the key to their pastoral accompaniment, so that they not only know that they belong to the Body of Christ, which is the Church, but can also have a joyful and fruitful experience of it"*<sup>118</sup>. With this mindset, the Church is able to draw closer to the faithful and help them in their marital and family life.

Systematic accompaniment can be carried out by ordained ministers, religious men and women, and trained and qualified lay men and women. This approach reflects the Church's open and dialogical stance by enabling personal and continuous contact between ministers and pastoral workers and all the faithful, without exclusion or prejudice. It is a *modus operandi* that

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<sup>117</sup> AL 303.

<sup>118</sup> AL 299.

makes pastoral practice a means of evangelization and conversion to the concrete living of the faith, making the community a welcoming space in which the faithful are co-responsible for one another.

There is no rivalry or competition, but rather distinctions in roles and ministries that enable the Church, the body of Christ, to remain faithful to the mission entrusted to it by Jesus. Shared responsibility in accompaniment is essential to ensure dignified assistance to all the faithful. Communities that centralize all responsibility on the ordained minister risk stifling charisms, clericalizing the common mentality, accommodating the faithful in a passive position, and limiting pastoral care to the sacramental dimension. The welcome proposed by Pope Francis requires a conversion of structures capable of avoiding clericalism and promoting greater participation by all. For an ecclesial experience that respects the ministerial priesthood and the common priesthood of the faithful, it is necessary to restore attitudes of co-responsibility, subsidiarity, solidarity, and synodality at all ecclesial levels.<sup>119 120</sup>

Co-responsibility among the faithful allows welcoming to be a practice capable of respecting all instances and competences in the Church. It is a way of being ecclesial that ensures the broad participation of all in the community. Each faithful person assumes, under the guidance of the pastor and according to their ecclesial reality, a responsible attitude in evangelization and welcoming. By joining forces (and not encouraging fragmentation), it is possible to make the Church's voice heard on marriage, even in societies that relativize the meaning of marriage and family, since

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<sup>119</sup> "The community plays a very important role in accompanying young people, and it is the whole community that must feel responsible for welcoming, motivating, encouraging, and stimulating them. This implies that young people are looked upon with understanding, esteem, and affection, and that they are not constantly judged or expected to achieve a perfection that does not correspond to their age." *Christus Vivit* 243.

<sup>120</sup> Cf. GS 43

the Church, as an institution, is also responsible for promoting the values of marriage<sup>121</sup>.

Subsidiarity is visible in the identity of the particular Church. Each diocesan bishop has the pastoral care of a specific portion of the people of God. Pope Francis, grounded in the synodal path, in promulgating *MIDI* and *MITIS*, recalls the role of the diocesan bishop who, even in the absence of an academic title, is a natural judge. In promulgating the *processus brevior coram episcopo*, he established that the diocesan bishop is the only one capable of issuing a sentence recognizing the nullity of the bond or promulgating a decree sending the case to the ordinary forum<sup>122</sup>. For this procedural route to be applied effectively, it is necessary for the diocesan bishop to invest in the training of pastoral agents to guide the faithful and to establish an ecclesiastical court or ensure means to improve the judicial services provided in the existing court.

Subsidiarity is also realized in the various tasks that each member of the faithful receives as *a* specific *munus*, especially those who collaborate directly in some structure established in the particular Church, with the specific purpose of assisting marriage and the family. Pope Francis asks all pastoral workers who work directly with marriage to be loyal collaborators with the diocesan bishop and to apply canonical norms, recognizing the synodal spirit and pastoral consolation:

"Strive to be missionaries and witnesses of the synodal spirit that is at the origin of these norms, as well as of the pastoral consolation that is the goal of these new matrimonial norms, in order to strengthen the faith of

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<sup>121</sup> Cf. GS 42.

<sup>122</sup> "In the shorter process, two inseparable conditions are required for validity: the episcopate and being the head of a diocesan community of the faithful (cf. can. 381 § 2). If one of the two conditions is missing, the shorter process cannot take place. The request must be judged with the ordinary process." FRANCISCUS PP., *Ad Participes Cursus*, (2017), 1315.

God's holy people through charity. May the synodal spirit and pastoral consolation become the way you act in the Church, especially in the delicate area of the family seeking the truth about the marital status of spouses. With this attitude, may each of you be a loyal collaborator with your bishop, to whom the new norms recognize a decisive role, especially in the short process, since he is the "natural judge" of the particular Church"<sup>123</sup> .

Solidarity is another dimension of accompaniment. Being in solidarity with the pain of others allows us to understand the situation based on the concrete reality of each marriage and to foster the conversion of ecclesial structures. The human and financial resources that a diocese with a larger structure can offer to another smaller diocese is a concrete sign of solidarity. Both contact between the faithful and the sharing of resources allow for qualified and continuous accompaniment. The community of faith that generates open structures and spaces for dialogue ensures that evangelization is a concrete sign of God's presence in the lives of the faithful, including those who are experiencing crisis and marital breakdown.

One of the concrete obstacles to access to ecclesiastical justice is the cost of proceedings. Many faithful do not have the resources to pay for the process. Pope Francis has insisted that economic issues should not be an obstacle to accompaniment<sup>124</sup> . Judicial assessment is a qualified pastoral service and should be available to all the faithful who need this legal

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<sup>123</sup> FRANCISCUS PP., *Ad Participes Cursus*, (2017), 1314.

<sup>124</sup> "Resolutely eliminate any worldly impediment that makes it difficult for a large number of the faithful to access ecclesiastical tribunals. Economic and organizational issues cannot constitute an obstacle to canonical verification of the validity of a marriage." FRANCISCUS PP., *Ad Participantes Curriculum Institutionis Episcopis de Novo Matrimoniali Processu Constitutum Rota Romana*, November 18, 2016, in *AAS*, CVIII (2016), 1384.

discernment. Financial solidarity is a requirement that ensures the provision of good pastoral and legal accompaniment.

Synodality, in turn, is a way of being for the Church<sup>125</sup>. Since its first assembly in the modern era in 1967, convened by Pope Saint Paul VI, the structure of the synod has been consolidated as a structure of participation and ecclesial communion. The synodal path enables the missionary dimension of the Church, which accompanies the faithful and adopts an attitude of welcome and listening to the various ecclesial realities. *"The Church 'going forth' is the community of missionary disciples who take the initiative, who get involved, who accompany, who bear fruit and celebrate"*<sup>126</sup>. As the International Theological Commission points out:

"Synodality is lived in the Church in the service of mission. *Ecclesia peregrinans natura sua missionaria est*, it exists to evangelize. The whole people of God is the subject of the proclamation of the Gospel. In it, every baptized person is called to be a protagonist of the mission, for we are all missionary disciples. The Church is called to activate in synodal synergy the ministries and

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<sup>125</sup> Synodality expresses the subjectivity of the whole Church and of everyone in the Church. The faithful are *συνόδοι*, companions on the journey, called to be active subjects as participants in the one priesthood of Christ and recipients of the various charisms communicated by the Holy Spirit for the common good. Synodal life bears witness to a Church made up of free and diverse subjects, united among themselves in communion, which manifests itself dynamically as a single communal subject, which, resting on the cornerstone that is Christ and on the pillars that are the Apostles, is built like so many living stones into a "spiritual house" (1 Pet 2:5), "the dwelling place of God in the Spirit" (Eph 2:22). COMMISSIO THEOLOGICA INTERNATIONALIS, *Synodality in the Life and Mission of the Church*, March 2, 2018, n. 55, available at URL: &lt;[https://www.vatican.va/roman\\_curia/congregations/cfaith/cti\\_documents/rc\\_cti\\_20180302\\_synodalita\\_po.html](https://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_cti_20180302_synodalita_po.html)&gt;; (on 03/10/2020).

<sup>126</sup> EG 24.

charisms present in her life to discern the paths of evangelization in listening to the voice of the Spirit"<sup>127</sup> .

It is the missionary nature of the Church that grounds the synod as a structure of participation and communion. *"The Gospel invites us first of all to respond to the God who loves us and saves us, recognizing him in others and going out of ourselves to seek the good of all. This invitation must not be obscured under any circumstances."*<sup>128</sup> . Synodality allows ecclesial structures to be open and attentive to concrete reality. According to Pope Francis, *"the path of synodality is the path that God expects from the Church of the third millennium"*<sup>129</sup> .

When applying this understanding to the reality of marriage, it becomes clear that the synodal path of the family, highlighted by Pope Francis in paragraph 4 of *AL*, emphasized several challenges for the Church: renewing the language of catechesis<sup>130</sup> ; restoring the meaning of the family in its Christian and social dimensions<sup>131</sup> ; accompanying

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<sup>127</sup> COMMISSIO THEOLOGICA INTERNATIONALIS, *Synodality*, no. 53.

<sup>128</sup> *EG* 39.

<sup>129</sup> FRANCISCUS PP., *Allocutio: Occasione L. anniversariae*, 1139.

<sup>130</sup> *"Some Catholics have difficulty living their lives in accordance with the teaching of the Catholic Church on marriage and the family, and in seeing in that teaching the goodness of God's creative plan for them."* *Relatio Synodi* 2015, n. 7 .

<sup>131</sup> *"The Church must instill in families a sense of ecclesial belonging, a sense of 'us' in which no member is forgotten. Everyone should be encouraged to develop their abilities and to realize their life's project in the service of the Kingdom of God. Every family, inserted into the ecclesial context, should rediscover the joy of communion with other families in order to serve the common good of society, promoting a politics, an economy, and a culture at the service of the family, including through the use of social networks and the media."* *Instrumentum laboris* 2015, n. 72.

preparation for marriage<sup>132</sup>, the first years of married life<sup>133</sup> and situations of marital failure<sup>134</sup>. The canonical changes are a concrete way of translating the reflection of the synodal journey into norms. For example, the norms for marriage preparation are not limited to isolated moments in the lives of Christians, but enable a true path of human and spiritual growth toward the maturity necessary to assume the commitment of marriage<sup>135</sup>.

The preparation of the cause has become a fundamental step in forming the conscience of the faithful regarding the Church's teaching on marriage and canonical norms. Even with few changes in the canonical text, it is clear that *MIDI* and *MITIS* touched on concrete issues of ecclesial structure that were reflected in the synod, in view of the pastoral conversion of judicial activity. In the spirit of synodality, this interpretative attitude gains strength as particular Churches take up Pope Francis' proposal and adopt the perspective of welcoming, preparing operators, establishing new tribunals, and offering qualified service in parishes. The art of accompaniment and listening, in addition to being necessary for full welcome, allows for personal and ecclesial discernment.

In the life of the faithful, discernment is not an end in itself, but a stage in the formation of their conscience so that they can freely and

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<sup>132</sup> *Christian marriage is a vocation that is accepted with adequate preparation in a journey of faith, with mature discernment, and should not be considered only as a cultural tradition or a social or legal requirement. Therefore, it is necessary to create paths that accompany the person and the couple so that the communication of the contents of the faith is combined with the experience of life offered by the entire ecclesial community.*" *Instrumentum laboris* 2015, n. 84.

<sup>133</sup> *The mission of the family embraces the fruitful union of spouses, the education of children, the witness of the sacrament, the preparation of other couples for marriage, and the friendly accompaniment of those couples or families who encounter difficulties.* *Relatio Synodi* 2015, n. 89.

<sup>134</sup> *The Synod aimed to promote and defend the family and Christian marriage for the greater good of spouses faithful to the covenant celebrated in Christ. It was also to study the situation and development of the family in today's world, preparation for marriage, ways to help those who suffer because of the failure of their marriage, the education of children, and other issues.*" FRANCISCUS PP., *Ad Participes Cursus*, (2017), 1313-1314.

<sup>135</sup> Cf. canons 1063-1072.

autonomously act in accordance with the Gospel. In the institutional life of the Church, discernment allows for the updating of the method and language with which the *depositum fidei* is transmitted, keeping it faithful to the mission received. For both the faithful and the Church, discernment must be built in the light of faith<sup>136</sup>.

The category of discernment, so widely promoted by Pope Francis, must be understood with the virtue of prudence. Discernment leads to prudent action. It is essential to refer to St. Thomas Aquinas when clarifying that "*prudence concerns only practical reason*"<sup>137</sup> and that "*it is necessary for the prudent person to know the universal principles of reason, and also to know the particulars with which operations are concerned*"<sup>138</sup>. Discernment is a theoretical act of reflection and consideration that leads to action that may or may not be prudent. It is the path of discernment that favors knowledge of universal principles and concrete reality. By applying these categories in the process of discerning marital fragility, we see that the teachings of the Church ensure the data of faith and apostolic tradition that illuminates the concrete reality in which Christians live, including those marked by marital failure<sup>139</sup>. As the Catechism of the Catholic Church teaches:

"It is prudence that immediately guides the judgment of conscience. The prudent man decides and orders his conduct according to this judgment. Thanks to this virtue, we apply moral principles without error to

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<sup>136</sup> Cf. *Lumen Fidei* 8.

<sup>137</sup> St. THOMAS AQUINAS, *STh*, I-II q. 47, a. 2, response.

<sup>138</sup> St. THOMAS AQUINAS, *STh*, I-II q. 47, a. 3, response.

<sup>139</sup> "Man's response to God's love, the encounter with this inconceivable gift, does not leave man unchanged and influences even his deepest relationship with himself, as it becomes experiential in his conscience." RÖMELT 2001, 124.



particular cases and overcome doubts about the good to be done and the evil to be avoided "<sup>140</sup> .

Personal discernment requires formation of conscience and prudent action. Acceptance is not enough; accompaniment must promote a path of discernment that enables each Christian, enlightened by faith and doctrine, to maturely assume their ecclesial reality. "*Conscience is the response of man, who in his encounter with the supportive God of salvation history is freed to achieve an ultimate personal objectivity, a response to God's encounter and call*"<sup>141</sup> .

Faced with the situation of a validly celebrated marriage between two baptized persons that has culminated in the objective reality of marital failure, "*each person must be very sincere with himself*"<sup>142</sup> . Even in these cases, discernment should help these people to follow a path of integration into the community of faith. Accompanying the faithful who have not had the joy of building a united and happy family is a way of helping them discern how to continue their ecclesial journey. Therefore, it is not a question of antagonistic realities, but of forming the conscience of the faithful so that they respond correctly to the teachings of the Gospel.

## 7. FINAL NOTE

Ecclesial discernment is an intrinsic necessity in the Church that stems from its missionary nature. The explicit proclamation of the Gospel requires adequate responses to diverse social, cultural, ethnic, and religious contexts. One way to effect ecclesial discernment is through the synod, since the Church "*questions itself on its fidelity to the deposit of faith, which for it is*

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<sup>140</sup> CONFERÊNCIA NACIONAL DOS BISPOS DO BRASIL, *Catecismo da Igreja Católica*, Loyola, São Paulo, 2017, n. 1806.

<sup>141</sup> RÖMELT 2001, 25.

<sup>142</sup> *AL* 240.

*not a museum to be looked at or even just safeguarded, but a living source from which the Church drinks to quench its thirst and enlighten the deposit of life*"<sup>143</sup>. It is necessary to renew language, to be open to dialogue, to be the presence of the Incarnate Word. By placing itself in a position of discernment, the Church learns from the concrete vicissitudes of the faithful and propagates the Kingdom of God. Acting mercifully towards those who suffer from the breakdown of marriage and the family demonstrates the prudent action of the Church.

Pope Francis has encouraged the proclamation of the Gospel in ever new ways<sup>144</sup>, without fear of responding to the calls of concrete reality and emphasizing that the Church is the presence of God's love<sup>145</sup>. This stance is not only the fruit of continuous discernment, but also the grace of the Holy Spirit:

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<sup>143</sup> FRANCISCUS PP., Allocutio: *Ad Synodales Patres*, 1136.

<sup>144</sup> "It is not enough to reiterate the value and importance of doctrine if we do not become guardians of the beauty of the family and if we do not take compassionate care of its frailties and wounds. These two aspects are at the heart of every family ministry: the frankness of the Gospel proclamation and the tenderness of accompaniment. On the one hand, in fact, we proclaim to couples, spouses, and families a Word that helps them grasp the authentic meaning of their union and their love, a sign and image of the Trinitarian love and the covenant between Christ and the Church. It is the ever-new Word of the Gospel from which every doctrine, including that on the family, can take shape." FRANCISCUS PP., Message to a conference when the opening of the special year "Amoris laetitia": *To preserve the beauty and heal the wounds of the family*, in *L'Osservatore Romano*, (2021), March 20, 2021, available at URL: &lt;https://www.osservatoreromano.va/it/news/2021-03/quo-064/per-custodire-la-bellezza-br-e-curare-le-ferite-br-della-famigli.html&gt; (on 03/30/2021).

<sup>145</sup> "In its constant discernment, the Church can also come to recognize its own customs that are not directly linked to the core of the Gospel, some of which are deeply rooted in history, but which today are no longer interpreted in the same way and whose message is not usually perceived adequately. They may be beautiful, but now they do not serve the same purpose in terms of transmitting the Gospel. We are not afraid to review them. Similarly, there are ecclesial norms or precepts that may have been very effective in other eras, but no longer have the same educational force as channels of life." EG 43.

Discernment must develop in a space of prayer, meditation, reflection, and study necessary to listen to the voice of the Spirit; through sincere, serene, and objective dialogue with brothers and sisters; with attention to the real experiences and problems of each community and each situation; in the exchange of gifts and the convergence of all energies for the building up of the Body of Christ and the proclamation of the Gospel; in the crucible of purification of affections and thoughts that makes it possible to understand the will of the Lord. In the search for evangelical freedom from any obstacle that might weaken openness to the Spirit<sup>146</sup>.

The Church, in its constant journey of discernment, is able to approach with mercy the pain of so many faithful who live in irregular marital situations and offer concrete help so that they may be reintegrated into the community of faith. Even if a marriage has been declared legally valid, the reality of marital failure requires pastoral care. It is not enough to give a valid response; it must be effective and integrate the faithful into the life of the community<sup>147</sup>. Discernment and prudence, combined with welcome and accompaniment, enable personalized assistance in all marital situations, culminating in the integration of the faithful into the life of the Church.

Integration is the stage that allows us to move from initial welcome to full welcome, because "*no one can be condemned forever, because this is not the logic of the Gospel*"<sup>148</sup>. Pope Francis' proposal is to rethink pastoral

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<sup>146</sup> COMMISSIO THEOLOGICA INTERNATIONALIS, *Synodality*, n. 114.

<sup>147</sup> "I encourage you to remain united with your communities, while I hope that dioceses will take appropriate steps to welcome and be close to you." BENEDICT XVI, Homily: *apud Brexii Hortos occasione VII Universalis Familiarum Conventus*, in *AAS*, CIV (2012), 545.

<sup>148</sup> *AL* 297.

responses so that a comprehensive welcome can be achieved. This attitude will only be possible if a culture of pastoral discernment is effectively created in the Church, which necessarily follows accompaniment. Within the Church, the most common opinion is that of those who favor a partial welcome of the faithful. This solution is considered a moderate solution in the face of those who propagate a strict or lax pastoral response<sup>149</sup>.

It is necessary to break with lax and strict pastoral responses, but it is also necessary to overcome the satisfaction with partial solutions that end up generating exclusions within the community of faith<sup>150</sup>. It is possible to envision the possibility of full integration, including in the sacramental dimension<sup>151</sup>. Discernment, which precedes integration, involves mercy, gradualness, and prudence. Gradualness in discerning marital realities allows for steps toward integration. Pope Francis does not defend the gradualness of the law. He takes up Pope St. John Paul II's proposal of the law of gradualness<sup>152</sup> and reaffirms that canon law contains Christian values regarding marriage.

When the sentence issued by the ecclesiastical court confirms the validity of the marriage, the law is applied directly to the specific case. Once the technical-legal discernment has been completed, it is necessary to enter

<sup>149</sup> Laxists and rigorists fail to discern. Those who defend a lax stance relativize the data of faith, propagate permissiveness, break with the formation of the conscience of the faithful, and empty the ecclesial commitment to promoting a journey of conversion. Rigorous people, on the other hand, irreversibly exclude those who live in irregular marital situations, preventing them from fully experiencing grace in the community of faith. By making *a priori* judgments, regardless of discerning the concrete reality, they create segregation among the faithful and foster an erroneous sense of belonging to the Church.

<sup>150</sup> "I understand those who prefer a more rigid pastoral approach that leaves no room for confusion. But I sincerely believe that Jesus wants a Church attentive to the good that the Spirit spreads in the midst of fragility: a Mother who, at the very moment when she clearly expresses her objective teaching, "does not give up on the good that is possible, even though she runs the risk of getting dirty with the mud of the road." AL 308.

<sup>151</sup> Cf. note 351, AL.

<sup>152</sup> Cf. AL 295.

into another stage of discernment that considers the actual situation. It would be perfect if all marriages were successful, but there are several irregular situations that require a "*gradualità nell'esercizio prudenziale degli atti liberi in soggetti che non sono in condizione di comprendere, di apprezzare o di praticare pienamente le esigenze oggettive della legge*"<sup>153</sup>.

For the faithful who are unable to fully understand, appreciate, or practice the objective requirements of the law, pastoral gradualism is necessary to help them discern the degree of integration and participation in the community. To foster this culture in the Church, it is important to rethink legal accompaniment. It is wrong to start from the law to understand the specific case or to try to fit a family situation into the legal text *a priori*. The hermeneutical movement is precisely the opposite, that is, it needs to start from the specific case to apply the norm that must be appropriate to the specific marital reality.

Unfortunately, there are court officials, knowledgeable in canon law, who succumb to the error of disconnecting the value of the norm from the context of life, and repeat theoretical precepts or generic evidentiary schemes, in which the specific situation must fit into prefabricated models<sup>154</sup>. It is necessary to overcome the temptation of complacency and devote time to each case, treating them in their particularity and detail! Judging and deciding on the basis of abstract structures is a sin that must be removed from ecclesial structures. Similarly, economic considerations cannot prevent the realization of justice in the Church.

The hermeneutics in Pope Francis' magisterium assumes the understanding of *the norma missionis* as the foundation of the legal system in the Church. Canon law should not be interpreted as an instrument of

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<sup>153</sup> AL 295.

<sup>154</sup> "The conversion of judicial structures, abandoning pastoral immobility and approaching it as an 'outgoing' operation, organized from a willingness to go in search of those who might need this service and without resorting to the schemes that have always been used and with which one can be lazily familiar." ARROBA CONDE 2015, 174.

exclusion, nor should it create structures and financial requirements that make it impossible for the faithful to be included in the community. If such values are neglected by the law, then ecclesial norms must be rethought. All Christians should feel respected, for the Church seeks to *"heal wounded couples with the oil of welcome and mercy; to be a 'field hospital', to have open doors to welcome anyone who knocks asking for help and support"*<sup>155</sup>. It is not a question of welcoming sin, but the sinner. We must learn from Jesus to wait for the harvest to separate the wheat from the chaff<sup>156</sup>, because a premature attitude can destroy the wheat.

The continuity of the judicial service proposed in Pope Francis' teaching breaks with the logic of an activity that begins with the presentation of the complaint in the ecclesiastical court and ends with the sentence. Pope Francis proposes that the art of accompaniment should impel the judicial pastoral ministry to undertake an experience of conversion and discernment that will enable it to revitalize its own judicial activity with a view to the full integration of the faithful into the community. In other words, judicial pastoral care must be integrated into the diocesan and parish reality in order to join forces with other ordinary pastoral ministries and train pastoral agents who can help in all phases of married life. In cases of crisis, such agents can collaborate as mediators in the effort to help the couple rediscover the meaning of family; in situations of rupture, they can help in the preparation of the case; in cases presented to the ecclesiastical court, the judge can issue a sentence that is useful for the continuity of pastoral discernment<sup>157</sup>. Therefore, the logic to be widely implemented in the

<sup>155</sup> FRANCISCUS PP., Homily: *XIV coetu generali Ordinario Synodi Episcoporum ineunte*, in *AAS*, CVII (2015), 1132.

<sup>156</sup> Cf. *Mt* 13:29-30.

<sup>157</sup> *"The process has emerged as a place of both institutional and personal empowerment: institutional because, through jurisprudence, ecclesial society progressively acquires greater awareness of the meaning of the conjugal covenant, as explained and defined by the Magisterium; personal because, in it, the faithful can become aware of their right to free choice in marriage which, precisely because it is entrusted to their personal self-determination, is not immune to error."* BUSELLI MONDINI 2009, 535.

Church breaks with any segmentation of marriage assistance and enables comprehensive accompaniment in view of *the bonum familiae and ecclesial communion*.

This mentality requires an expansion of judicial service consistent with the missionary nature of canon law<sup>158</sup>. By avoiding any rupture between law and pastoral care, Pope Francis' proposal is consolidated: *"responsible personal and pastoral discernment of particular cases, which should recognize that, since 'the degree of responsibility is not the same in all cases,' the consequences or effects of a norm do not necessarily always have to be the same"*<sup>159</sup>. Accompaniment and legal-pastoral discernment are indispensable for the healthy integration of so many faithful who are on the margins and who endure the frustration of marital failure.

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<sup>158</sup> In fact, the belief has spread even in certain ecclesial circles that the pastoral good of people in irregular marital situations requires a sort of canonical regularization, regardless of the validity or nullity of their marriage, that is, regardless of the "truth" about their personal condition. The path of declaring a marriage null and void is in fact considered a legal tool for achieving this goal, according to a logic in which the law becomes the formalization of subjective claims." BENEDICTUS PP. XVI, Allocutio: *Ad Tribunal*, (2007), 87-88.

<sup>159</sup> AL 300.

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