

essential properties of marriage. This would lead to a very difficult ecumenical situation as marriage is not the special prerogative of devout Catholics. The Church grants the permission to marry in the case of mixed religion since it presumes that the baptised non-Catholic who wishes to marry a Catholic is entering marriage with a naturally valid and sufficient consent.

Each person who presents to the Tribunal and avows a lack of faith, a disdain for the Church and an intention to marry in a manner suited to their own disposition, should be treated as anyone else who challenges the validity of their marriage. A full, proper and diligent investigation, with evidence of the actions as well as the opinions of such persons must be carried out and not with a general presumption that contemporary people do not share the Churches understanding of marriage, especially with regard to unity, exclusivity and the good of the spouses.

Monsignor Brendan Daly

Pope Benedict XVI

Pope Benedict XVI addressed the Rota on January 26, 2013 and raised the question of the necessity of faith for a valid marriage:

The indissoluble pact between a man and a woman does not, for the purposes of the sacrament, require of those engaged to be married, their personal faith; what it does require, as a necessary minimal condition, is the intention to do what the Church does. However, if it is important not to confuse the problem of the intention with that of the personal faith of those contracting marriage, it is nonetheless impossible to separate them completely.¹²

An issue is that if a spouse rejects the Church's teaching and vision of marriage, then what is the vision of marriage that the person has. When a spouse replaces the teaching of the Church with the subjectivism of contemporary culture. Pope Benedict XVI observed:

2. Contemporary culture, marked by accentuated subjectivism and ethical and religious relativism, places the person and the family before pressing challenges. Firstly, it is faced with the question about the capacity of the human being to bind him or herself, and about whether a bond that lasts a lifetime really is possible and corresponds with human nature or whether, rather, it contradicts man's freedom and self-fulfilment. In fact, the very idea that a person fulfils him or herself living an "autonomous" existence and only entering into a relationship with the other when it can be broken off at any time forms part of a widespread mindset

¹² Pope Benedict XVI. Address to the Rota. January 26, 2013; https://www.vatican.va/content/benedict-xvi/en/speeches/2013/january/documents/hf_ben-xvi_spe_20130126_rota-romana.html

(cf. *Discourse to the Roman Curia*, 21 December 2012).¹³

Contemporary culture has an erroneous view of the essential elements and properties of marriage. This can give rise to an erroneous concept of the nature of the marriage:

Of course, in the cases submitted to your judgement, it will be the investigation *in facto* that will ascertain the possible grounds for this reason for annulment, prevalent or co-existent with another reason of the three Augustinian “goods” of marriage: procreativity, exclusiveness and permanence. One must not, therefore, disregard the consideration that can arise in the cases in which, precisely because of the absence of faith, the good of the spouses is jeopardized, that is, excluded from the consent itself; for example, in the hypothesis of subversion on the part of one of them, because of an erroneous conception of the nuptial bond, of the principle of equality, or in the event of the refusal of the conjugal union that distinguishes the marriage bond, together with the possibly concomitant exclusion of fidelity and of the practice of conjugal relations in *humano modo*, a truly human manner.¹⁴

Pope Francis

Pope Francis replaced Pope Benedict XVI and reformed the matrimonial procedures. Significantly, Pope Francis emphasises an “erroneous conception of the nuptial bond”. This is pointing to the grounds relating to error in particular. Pope Francis stated in the motu proprio *Mitis Iudex Dominus Iesus*

Art. 14 § 1. Among the circumstances of things and persons that can allow a case for nullity of marriage to be handled by means of the briefer process according to canons 1683-1687, are included, for example: the defect of faith which can generate simulation of consent or error that determines the will; a brief conjugal cohabitation; an abortion procured to avoid procreation; an obstinate persistence in an extra conjugal relationship at the time of the wedding or immediately following it; the deceitful concealment of sterility, or grave contagious illness, or children from a previous relationship, or incarcerations; a cause of marriage completely extraneous to married life, or consisting of the unexpected pregnancy of the woman, physical violence inflicted to extort consent, the defect of the use of reason which is proved by medical documents, etc.¹⁵

Pope Francis speaks of circumstances of things and persons that can allow a

¹³ Pope Benedict XVI. Address to the Rota. January 26, 2013.

¹⁴ Pope Benedict XVI. Address to the Rota. January 26, 2013.

¹⁵ Pope Francis. motu proprio. *Mitis Iudex Dominus*, 15 August 2015; https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio_20150815_mitis-iudex-dominus-iesus.html

brief process. The first example is “the defect of faith which can generate simulation of consent or error that determines the will.” Pope Francis does not say that this is a ground for nullity, but a circumstance that could give rise to a ground of nullity. Pope Francis reinforces this in his address to the Rota on January 23, 2015:

Yet the Church is well aware of the suffering of many family nuclei that fall apart, leaving a trail of broken affective relations, endeavours and shared expectations. The judge is called to undertake judicial review when there is doubt regarding the validity of a marriage so as to ascertain whether there is something defective at the origin of the consent — both directly as a defect of valid intention, as well as by a grave *deficit* in the understanding of marriage itself to such an extent that this is what dictates one’s will (cf. can. 1099). Indeed, at the root of the crisis of marriage is often a crisis of knowledge enlightened by faith — that is, knowledge informed by the adhesion to God and his design of love realized in Jesus Christ.¹⁶

Pope Francis concludes this very likely leads to cases of error determining the will:

For this reason, the judge, in deliberating the validity of expressed consent, must keep in mind the context of value and faith — or the absence or lack thereof — in which the intention to marry is formed. Indeed, the lack of knowledge of the contents of the faith might lead to what the Code calls *determinant error of the will* (cf. can. 1099). This circumstance can no longer be considered exceptional as in the past, given the frequent prevalence of worldly thinking imposed on the magisterium of the Church. Such error threatens not only the stability of marriage, its exclusivity and fruitfulness, but also the ordering of marriage to the good of the other.¹⁷

International Theological Commission

The International Theological Commission in its document *The Reciprocity between Faith and Sacraments in the Sacramental Economy* 3 March 2020 stated:

166 b) There can be no sacrament without faith. A kind of sacramental automatism would deny the dialogical character of the sacramental economy, which is structured around the intimate connection between faith and sacraments (cf. Chapter 2). Thus, in order for there to be a sacrament in the case of marriage between baptized non-believers, there must be some active faith, regardless of the difficulty in positively determining it, either in the spouses or in attributing all of

¹⁶ Pope Francis. address to the Rota January 23, 2015; https://www.vatican.va/content/francesco/en/speeches/2015/january/documents/papa-francesco_20150123_tribunale-rotaromana.html

¹⁷ Pope Francis. address to the Rota January 23, 2015.

it to Mother Church.¹⁸

Validity of marriage depends on whether there is the intention to enter into a true natural marriage. A natural marriage includes the essential properties of indissolubility, fidelity, good the spouses and the good of offspring. The International Theological Commission acknowledged that:

For the express denial of supernatural reality, the explicit abandonment of faith (sometimes even with a formal act), or the total absence of adherence to the faith, baptized but who never personally assumed the faith, places these persons totally at the mercy of current social opinions on matrimonial and family matters.¹⁹

The International Theological Commission concluded by stating:

Our proposal rejects two extremes. On the one hand, we reject an absolute sacramental automatism (cf. esp. §§ 41 e and 78 e), which holds that every marriage between the baptized would be a sacrament, either through the presence of a minimal faith linked to the character of baptism or through the intervention of Christ and the Church presupposed by baptism. On the other hand, we also reject an elitist sacramental scepticism that holds that any degree of absence of faith would vitiate the intention and thus invalidate the sacrament. We affirm that, in the case of an absence of faith as explicit and clear as that of the described baptized non-believers, serious doubts about an intention that includes the goods of natural marriage, as understood by the Church, make it possible to maintain serious reservations about the existence of a sacramental marriage.²⁰

The circumstances of the marriage and the couple may lead one to think there is a likelihood of the marriage being invalid. However, the invalidity of the marriage must be established by the law and the facts in each case. The tribunal must ascertain as precisely as possible what each spouse thought about or intended with regard to permanence, faithfulness, fruitfulness and the good the spouses in a marriage. If the spouses' mentality or intentions about the essential elements and properties of marriage are in conflict with Church teaching, there will probably be grounds of simulation or error determining the will.

For a declaration of nullity in a case of error determining the will as in canon 1099; the error must be deeply ingrained in the person's intellect. The person must have

¹⁸ International Theological Commission. *The Reciprocity between Faith and Sacraments in the Sacramental Economy*. 3 March 2020. https://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_cti_20200303_reciprocita-fede-sacramenti_en.html.

¹⁹ International Theological Commission. *The Reciprocity between Faith and Sacraments in the Sacramental Economy*.

²⁰ International Theological Commission. *The Reciprocity between Faith and Sacraments in the Sacramental Economy*.

a fixed idea about what marriage is and involves. Because the person has such a notion of marriage it can impact on the person's will. For the marriage to be invalid, the person must choose to enter a marriage that is not permanent and is able to be dissolved; or includes infidelity; and/or means the good of children is excluded.

With simulation, a person totally simulates when they enter marriage for some other reason such as immigration. A person partially simulates when they exclude an essential element or property of marriage. For the evidence we ideally need some kind of confession of the person simulating; the reason or motive why they simulated; proof of a positive act of the will; facts and circumstances that help understand the simulation.

Here are three different cases from New Zealand:

Case A

A priest was a school chaplain. He helped one of the pupils, who was a secondary school girl. She always appreciated that. After leaving school she totally rejected the faith. However, when she was getting married, she asked the priest to officiate at her wedding at her parent's house, but only as a civil celebrant only. He was not to wear vestments and there was to be no mention of God and no scripture readings. The priest agreed to all these things and only being a civil celebrant.

The marriage broke up and the husband wanted to marry a devout Catholic and to become a Catholic himself. He came to the tribunal.

The marriage was declared invalid because of a lack of form.

Case B

A woman who had grown up in a good Catholic family left school and then rejected the Catholic faith. She knew someone who had been sexually abused and she thought the Catholic Church was full of hypocrites and had no right to tell anyone how to live their lives. She had a good relationship with her parents and did not want to upset them. She enjoyed her Catholic schooling and wanted her children to go to Catholic schools. She had a problem with the prenuptial papers which included a statement that "I reaffirm my faith in Jesus Christ, and with God's help, will do my best to live that faith in the Catholic Church." She was not prepared to sign for this and the priest dealing with her was not very careful to explain what was possible. She also thought that people should only stay married while they were happy together. There was some discussion about this, but the wedding went ahead as planned. The marriage broke up about 10 years later. The marriage was declared invalid on intention against permanence.

Case C

A woman plans to get married in the Catholic Church but only to keep her parents happy. Her husband is also a baptised Catholic but is not a practicing Catholic. He said he would never go to church again. There is pre-marital sex and the woman is pregnant before the engagement. She decides the best thing is to become engaged and to do things right and be married. Her future husband is not that happy. He does not want his mates teasing him about a shotgun wedding. Therefore, he agrees to the wedding but only on condition that after the honeymoon she has an abortion so he does not get teased. The wife agrees reluctantly. After the abortion, the couple have four more children and then the marriage breaks up. The marriage was declared invalid on intention against children because the petitioner had a right to each and every child that was a fruit of their union.

Mrs Adrienne Connaghan

The reciprocity in the title of the document of the International Theological Commission *The Reciprocity between Faith and Sacraments in the Sacramental Economy* refers to Catholic teaching that a person must have a degree of faith to validly receive the sacraments, but also that the sacraments strengthen and enrich faith, the document noting that perfect faith is never requested for sacramental validity. Rather faith is something that is meant to grow.

It speaks of the reality in the post Vatican II era whereby the pastoral approach of evangelisation has sometimes been understood as if it did not include sacramental pastoral care, thereby losing the balance between the Word of God, evangelisation and the sacraments. They conclude in the same paragraph, that more than a few Catholics have come to believe that the substance of faith lies in living the Gospel, despising ritual, as alien to the heart of the Gospel, many believing they can live their faith fully without sacramental practice, which they consider optional and freely available.²¹

The document further stated that the situations in which validity is called into question because of a lack of faith are limited, although increasing, specifically in regard to non-believers. It acknowledges that verifying lack of faith is a difficult and complex pastoral problem.²²

The question concerning the sacramental quality of the marriage of baptised non-believers was addressed in the document. Concerning the definition of marriage as a 'creatural reality', the authors referred to the elevation of a natural bond to a 'supernatural sign' through baptism. Noting, as well, the presumption both theological and canonical that a valid marriage contract between baptised persons is a sacrament, even in the absence of faith of the contracting parties.²³

²¹ International Theological Commission, *The Reciprocity between Faith and Sacraments in the Sacramental Economy* 2000, 1.2.a)8.

²² Ibid., 166.c.

²³ Ibid., 4.2.a)143.