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"Ius connubii" Today — Legal and Pastoral Perspective

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Introductory remarks

Holy Father Pope Francis’ identification in the VI chapter of the *Amoris laetitia* adhortation (2016) of the preparation of young people for matrimony¹ as one of the contemporarily most important pastoral challenges, unquestionably constitutes a valuable fruit of two Synods of Bishops dedicated to family: extraordinary (2014) and ordinary (2015). It seems important to notice that as long as this idea adopted a character of a leading pastoral perspective in the adhortation, or — as it is nowadays articulated by prominent synodal fathers — axis of the entire (*der pastorale Hauptpunkt*) document,² we still need to wait for a doctrinal and practical formation of new creative layers of this idea. The first important step toward this direction was made by the very Pope in the Address to the Roman Rota of 2016 when, based on the testimony given by the par-

¹ FRANCIS: *Apostolic Exhortation “Amoris Laetitia”* [19.03.2016], [henceforth: AL], nn. 205—216.

² W. KASPER: *Deutschland ist in Sachen Ehevorbereitung ein Entwicklungsland*. Kath.net (24.04.2017) — http://www.kath.net/news/59321?keepThis=true&TB_iframe=true&height=650&width=850&caption=KATH.NET [accessed: 2.05.2017].

ticipants of the Synod,³ he voiced his belief that a proper preparation for matrimony has to be connected with “a kind of new catechumenate.”⁴ When appearing a year later (2017) in front of the same assembly he dedicated his entire speech to the recommendation of implementing in Churches particular programmes of matrimonial catechumenate (“new catechumenate”)⁵ — introducing the *novum* of this project to the context of pastoral recommendations set forth by Saint John Paul II, included in the 66th number of the *Familiaris consortio*⁶ adhortation.

It remains a characteristic fact that Pope Francis made the workers of church judiciary, and more wider — the world of the science of canon law, the first addressees of this important pastoral communiqué.⁷ What is

³ “[...] the Synod Fathers agreed on the need to involve the entire community more extensively by stressing the witness of families themselves and by grounding marriage preparation in the process of Christian initiation by bringing out the connection between marriage, baptism and the other sacraments. The Fathers also spoke of the need for specific programmes of marriage preparation aimed at giving couples a genuine experience of participation in ecclesial life and a complete introduction to various aspects of family life.” AL, n. 206; SYNOD OF BISHOPS: *III Extraordinary General Assembly. “The Pastoral Challenges of the Family in the Context of Evangelization”*. *Relatio Synodi*. Vatican City 2014, n. 39 — http://www.vatican.va/roman_curia/synod/documents/rc_synod_doc_20141018_relatio-synodi-familia_en.html [accessed: 2.05.2017].

⁴ FRANCIS: *Allocutio ad Tribunal Rotae Romanae, occasione Inaugurationis Anni Iudicialis* [22.01.2016]. “Acta Apostolicae Sedis” [henceforth: AAS] 108 (2016), p. 139.

⁵ FRANCIS: *Address to the Officials of the Tribunal of the Roman Rota for the Inauguration of the Judicial Year* [21.01.2017] — http://w2.vatican.va/content/francesco/en/speeches/2017/january/documents/papa-francesco_20170121_anno-giudiziario-rot-a-romana.html [accessed: 2.05.2017].

⁶ “The immediate preparation for the celebration of the sacrament of Matrimony should take place in the months and weeks immediately preceding the wedding, so as to give a new meaning, content and form to the so-called premarital enquiry required by Canon Law. This preparation is not only necessary in every case, but is also more urgently needed for engaged couples that still manifest shortcomings or difficulties in Christian doctrine and practice. Among the elements to be instilled in this journey of faith, which is similar to the catechumenate, there must also be a deeper knowledge of the mystery of Christ and the Church, of the meaning of grace and of the responsibility of Christian marriage, as well as preparation for taking an active and conscious part in the rites of the marriage liturgy.” JOHN PAUL II: *Apostolic Exhortation “Familiaris Consortio”* [22.11.1981], [henceforth: FC], n. 66.

⁷ Pope repeated this announcement in the address to parish priests, participants of a course organized by the Roman Rota: “Dear brothers, speaking recently to the Roman Rota, I recommended the implementation of a true catechumenate of future spouses including all the steps of the sacramental path: time of preparation for the marriage, its celebration and the years immediately thereafter. This catechumenate is principally entrusted to you parish priests, indispensable collaborators of the Bishops. I encourage you to implement it despite any difficulties you may encounter. And I believe the greatest hindrance is to view or experience marriage as a social construct — »we must comport with this social construct« — and not as a true sacrament which requires a very lengthy

more — similarly as the Pope of the Family in the aforementioned 1981 adhortation⁸ — he did not hesitate to accept as a litmus paper of the realization of the common aim of the Church, defined in such a way, the *in concreto* fulfillment of the requirements of the canon law:⁹ “The Church, [...] with a renewed sense of responsibility continues to propound marriage in its essential elements — offspring, the good of the spouses, unity, indissolubility and sacramentality — not as an ideal meant only for the few, notwithstanding modern models fixated on the ephemeral and the passing, but rather as a reality that in Christ’s grace can be lived out by all baptized faithful.”¹⁰ Although in the farther passages of the quoted Rotal allocution (2016) this thought is not developed, the aforementioned formula “free choice”¹¹ quite explicitly drives us toward the key to understanding of the crux of the papal enunciation. Namely, the anchored in the very human nature elementary principle of *ius connubii*: “All persons who are not prohibited by law can contract marriage.”¹² Together with equally fundamental principle of matrimonial consent (*consensus matrimonialis*) it defines the foundations of the system¹³ of matrimonial canon law and constitutes an important reference point¹⁴ for every contemporary model of pastoral preparation for matrimony.

Since today the greatest shepherd of Christ’s sheepfold — Church legislator in such a way puts emphasis, putting forward the plan of a new pastoral strategy focused on the promotion of family among young people,¹⁵ then what on all accounts is desired is the support of this evangelizational offense¹⁶ on the side of representatives of the world of science,

preparation.” FRANCIS: *Address to participants in the course on the marriage process* [25.02.2017] — http://w2.vatican.va/content/francesco/en/speeches/2017/february/documents/pa-pa-francesco_20170225_corso-processo-matrimoniale.html [accessed: 2.05.2017].

⁸ Cf. FC, n. 29; see also JOHN PAUL II: *Allocutio ad Sacrae Romanae Rotae Tribunalis Praelatos Auditores, Officiales et Advocatos coram admissos* [28.01.1982]. AAS 74 (1982), pp. 449—454.

⁹ FRANCIS: *Allocutio ad sodales Tribunalis Romanae Rotae* [22.01.2016]..., p. 139.

¹⁰ Ibidem

¹¹ Ibidem, p. 137.

¹² *Codex Iuris Canonici* [henceforth: CIC], can. 1058; cf. *Codex Canonum Ecclesiarum Orientalium* [henceforth: CCEO], can. 778.

¹³ Cf. K. LÜDICKE: *Münsterischer Kommentar zum Codex Iuris Canonici*, Essen (Lfg. Juli 2006), Einführung vor 1095/1—2; A. PASTWA: *Die kanonische Ehe im Zuge der personalistischen Erneuerung*, „Archiv für katholisches Kirchenrecht” 182 (2013), pp. 458—459.

¹⁴ A. PASTWA: *Wstęp*. In: *Miłość i odpowiedzialność — wyznaczniki kanonicznego przygotowania do małżeństwa*. Eds. A. PASTWA, M. GWÓZDŹ. Katowice 2013, p. 12.

¹⁵ “The desire to marry and form a family remains vibrant, especially among young people, and this is an inspiration to the Church.” AL, n. 1.

¹⁶ Invariably the hermeneutic pillar of the activity of the Church as part of the new evangelization, profiled in such a way, will be theological anthropology, renewed in the

especially theology and the study of canon law. It is exactly this peculiar imperative not to evade this obligation that is hidden behind this attempt of a synthetic depiction of the current state of research on the title *ius connubii*. The inspirations that follow from the papal magisterium — both these signaled earlier and the other ones, also worth a deeper contemplation — suggest reflection upon the following issues: first of all, glancing at *ius connubii* as a system principle, then taking notice of *iunctim* two principles of matrimonial law: *ius connubii* and *favor matrimonii*, and finally highlighting the implications of recognition in *ius connubii* of the right to celebrate an authentic marriage.

In pursuit of a “key” to an adequate depiction of *ius connubii* as a system principle

It was not without a reason that Pope Francis in his encyclical *Evangelii Gaudium* devotes a lot of attention to the “challenges of today’s world,”¹⁷ which, among other, the young people have to face when making important life decisions, concerning the matrimonial and family vocation.¹⁸ The advancing process of secularization, widely spreading deterioration of ethics, increase in relativism¹⁹ and other dehumanizational trends²⁰ cause — according to the Pope — “a general sense of disorientation, especially in the periods of adolescence and young adulthood which are so vulnerable to change.”²¹ What certifies best the seriousness of the problem is the fact that these contents were touched upon in the 2015 Rotal address, which shed light on the issue of: “the human and cultural context surrounding the formulation of the marriage intention.”²² Referring to the “individualistic” depreciating or even rejecting the objective moral norms as allegedly

teaching of Vatican II and famous John Paul II’s Wednesday Catechesis (Theology of the Body) according to the paradigm: Christ refers to the beginning. Cf. AL, nn. 9—13.

¹⁷ FRANCIS: *Apostolic Exhortation “Evangelii Gaudium”* [24.11.2013] [henceforth: EG], nn. 52—75.

¹⁸ “The family is experiencing a profound cultural crisis, as are all communities and social bonds. In the case of the family, the weakening of these bonds is particularly serious because the family is the fundamental cell of society, where we learn to live with others despite our differences and to belong to one another; it is also the place where parents pass on the faith to their children.” EG, n. 66.

¹⁹ EG, n. 64.

²⁰ Cf. EG, n. 51.

²¹ EG, n. 64.

²² FRANCIS: *Allocutio ad sodales Romanae Rotae* [23.01.2015]. AAS 107 (2015), p. 182.

inconsistent with the elementary human rights,²³ the Pope warns about a peculiar usurpation of law, namely about a temptation to see matrimony as “a form of mere emotional satisfaction that can be constructed in any way or modified at will.”²⁴

It was already his predecessor in the Holy See who noticed the dangerous coincidence: easy justification (in the name of a mistakenly understood pastoral love) of relativistic attitudes like: freedom separated from truth, freedom without responsibility — on the one hand, and a positivistic depiction of *ius connubii*, when this *ius* “becomes the formalization of subjective claims”²⁵ — on the other. That is where the answer to the question why the entirety of his special magisterium concerning canonistic matrimony (closed set of addresses to the Roman Rota in the years 2006—2013) Benedict XVI summarized by the means of an easy to interpret title: *veritas de matrimonio*²⁶ is located. That is not the end — in the contemporary display of this *veritas* the Pope ascribed an important role to the strong approach to the epistemological and methodological issue. The thing is about, first and foremost, a firm condemnation of “the hermeneutics of discontinuity and rupture,”²⁷ which is inconsistent with the *aggiornamento* logics of the Second Vatican Council. Indeed, only by the means of this *memento* (!) it is possible to capture the crux of the repeated — at least three times: in 2007, 2008 and 2011 — appeal of the highest legislator not to follow in the interpretation and application of *ius matrimoniale* code rules the positivistic concept of law.²⁸

Does such a precise — displaying the legal culture — identification of the “crisis of values”²⁹ around the premise of: “a false understanding of

²³ “Such claims usually follow from a form of moral relativism that is joined, not without inconsistency, to a belief in the absolute rights of individuals. In this view, the Church is perceived as promoting a particular prejudice and as interfering with individual freedom.” EG, n. 64.

²⁴ EG, n. 66; FRANCIS: *Allocutio ad sodales Tribunalis Romanae Rotae* [23.01.2015]..., pp. 183—184.

²⁵ BENEDICT XVI: *Allocutio ad Tribunal Rotae Romanae in inauguratione Anni Iudicialis* [27.01.2007]. AAS 99 (2007), p. 88.

²⁶ See O. FUMAGALLI CARULLI: *Le Allocuzioni di Benedetto XVI alla Rota Romana*. In: “*Iustitia et iudicium*”. *Studi di diritto matrimoniale e processuale canonico in onore di Antoni Stankiewicz*. Vol. 3. Eds. J. KOWAL, J. LLOBELL. Città del Vaticano 2010, pp. 1376—1381.

²⁷ BENEDICT XVI: *Allocutio ad Tribunal Rotae Romanae in inauguratione Anni Iudicialis* [27.01.2007]..., p. 87.

²⁸ BENEDICT XVI: *Allocutio ad sodales Tribunalis Romanae Rotae Romanae* [15.01.2011]. AAS 103 (2011), p. 109. See also R. SOBAŃSKI: *Kanonistyka i pozytywizm prawniczy*. In: “*Ecclesia et status*”. *Księga jubileuszowa z okazji 40-lecia pracy naukowej profesora Józefa Krukowskiego*. Ed. A. DĘBIŃSKI, K. ORZESZYNA, M. SITARZ. Lublin 2004, pp. 211—224.

²⁹ FRANCIS: *Allocutio ad sodales Tribunalis Romanae Rotae* [23.01.2015]..., p. 182.

marriage,”³⁰ not indicate toward pressing pastoral urgency,³¹ in order to intensify the evangelization effort — with a clear message to the young people: “the Church’s tradition clearly affirms the natural juridical character of marriage.”³² Here, it is worth signaling that within this matter what has a momentous indicative value for priests is the 2011 address of Benedict XVI to the Roman Rota, which to some extent summarizes the subject matter of papal magisterium, including the thread³³ which highlights the title legal and pastoral optics: “[...] there is no such thing as one marriage according to life and another according to law: marriage is one thing alone, it constitutes a real legal bond between the man and the woman, a bond which sustains the authentic conjugal dynamic of life and love.”³⁴ Finally, Pope’s teaching culminates — which does not come as a surprise — in the statement: “*ius connubii*, must be seen in this perspective.”³⁵

However, it is wrong to see in the latter enunciation exclusively a declaration of elementary truth, exemplarily reflected in a well known John Paul II’s statement in the *Letter to the Families*: “Marriage [...] remains the usual human vocation, which is embraced by the great majority of the people of God.”³⁶ If it is really possible and essential to accentuate the crucial role of Church legislation in planning and realizing the pro-family pastoral strategies, then it is not possible to perceive *ius connubii* exclusively within the narrow frame of right to a marriage ceremony. Since it is about a right to establish matrimonial and family community, elementary right,³⁷ which — as one of the prominent experts on this subject matter accurately notices — is not exhausted at the moment of entering into marriage, by the means of a personal and free decision, but determines recognition, protection and promotion resulting from this decision, matrimonial and family relations.³⁸ The conclusion is simple: discovering

³⁰ Ibidem.

³¹ FRANCIS: *Allocutio ad sodales Tribunalis Romanae Rotae* [22.01.2016]..., p. 139.

³² BENEDICT XVI: *Allocutio ad sodales Tribunalis Rotae Romanae* [15.01.2011]..., p. 109.

³³ We shall come back to the thread of legal and pastoral contemplation in the last part of this study.

³⁴ BENEDICT XVI: *Allocutio ad sodales Tribunalis Rotae Romanae* [15.01.2011]..., p. 109.

³⁵ Ibidem.

³⁶ GrS, n. 18.

³⁷ CIC, can. 219: “All the Christian faithful have the right to be free from any kind of coercion in choosing a state of life”; cf. CCCO, can. 22.

³⁸ H. FRANCESCHI: *Il diritto al matrimonio e la sua protezione nell’ordinamento canonico*. In: “*Iustitia et iudicium*”. *Studi di diritto matrimoniale e processuale canonico in onore di Antoni Stankiewicz*. Vol. 1. Ed. J. KOWAL, J. LLOBELL. Città del Vaticano 2010, p. 309.

a deep meaning in the mentioned papal magisterium is conditioned upon a proper understanding of *ius connubii*.

A valuable testimony of seeking the “key” to an adequate depiction of *ius connubii*, as a system principle of the Church matrimonial and family legislation, is the research work offered by Héctor Franceschi (the previously mentioned expert).³⁹ The last synthesis of his research in the study entitled *Il diritto al matrimonio e la sua protezione nell’ordinamento canonico* is concluded with the following statement: the study of historical sources of canon law, starting from Decretum Gratiani, through the Decretals of Gregory IX, till contemporary times clearly show a central place of the *ius connubii* principle, both in the system of Catholic Church matrimonial law, and in the application of the said law in particular cases. What it is about here is a principle, which has always been and is present: at the beginning in the *mens auctoritatis* — authority holding a Church office, the responsibility of whom, generally speaking, is for a particular marriage: the same before it is concluded (the entire preparation process with a culmination of allowing the nuptials enter into matrimony), as well as after it has been concluded (here on the one hand pastoral care over families, on the other submitting to judgment of the mentioned authority the issue of validity of marriage).⁴⁰

With reference to the results of the mentioned scientific synthesis it is difficult not to notice that from the historical perspective the entire matrimonial system of the Church seems to be an effort of legitimatizing (not so much limiting but rather giving a guarantee!) by the Church authority a right to enter into a marriage — to some degree in two ways; on the one hand in a consistent presentation of determinants of the very nature of matrimony, on the other, in presenting the sacramental dignity of a matrimonial relation of the baptized. Héctor Franceschi is right when he states that in every case the legal and pastoral authorization/affirmation of *ius connubii* spans two spheres: firstly, the sphere of freedom of young people entering into marriage (the situation before celebration of matrimony), secondly, the sphere of truth about the natural marriage bond, and in the marriage of the baptized — about a bond manifesting authenticity of the sacramental sign (in case of an already concluded marriage).⁴¹

³⁹ What is worth mentioning here is the following monograph: H. FRANCESCHI: *Riconoscimento e tutela dello “ius connubii” nel sistema matrimoniale canonico*. Milano 2004.

⁴⁰ H. FRANCESCHI: *Il diritto al matrimonio...*, p. 306.

⁴¹ *Ibidem*, p. 307.

We are free to notice that the sole historical outlook, although instructive,⁴² does not give sufficient premises to fully reveal the methodological horizon of the contemporary activity of the Church for the *ius connubii* — especially, taking into consideration easy to notice inertia in the legislative process, that is, reaching the greatly desired and adequate norms of matrimonial canon law. It is about, first and foremost, a centuries-old refraining of the Church legislator from introducing an obligatory canonical form of entering into marriage; such state of matters was introduced not earlier than by the regulations included in *Tametsi*⁴³ (famous decree of the Council of Trent). Different example: indeed, just, since it refers to the “ecumenical” idea of renewal of the Second Vatican Council, however, pointless in realization were the actions undertaken by the code legislator not to concoct invalidity of marriages of these baptized who do not have a full community with the Church; complicated fate of the regulation no. 1117 CIC,⁴⁴ with a well known amendment of October 26, 2009 *in motu proprio* by Benedict XVI *Omnium in mentem*,⁴⁵ speak for themselves.⁴⁶

The only thing that is left is to probe further into the issue what, as matter of fact, *ius connubii* is. The methodology of scientific research, owing to which the very nucleus of the answer to this question is unveiled, refers to — and it is a *sine qua non* condition of the reliability of the research — the need of an anthropological study of the foundations of

⁴² Here arguments are supplied by, among others, signalized by Héctor Franceschi historical circumstances, such as: (1) in the area of affirmation of freedom — supporting and promoting by the Catholic Church the liturgical form of entering into marriage; clear specification of the nature and importance of impediments to marriage (in order to secure the legal certainty); (2) in the area of affirmation of truth — a valuable historical achievement is the creation, within the frame of Church judiciary, of institutional possibilities of giving binding answers to questions asked by the follower about the validity of the concluded marriages. *Ibidem*, pp. 307—308.

⁴³ CONCILIUM TRIDENTINUM: *Decr. “Tametsi”* [11.11.1563]. DS 1813—1816; N. SCHÖCH: *La solennizzazione giuridica della “forma canonica” nel decreto Tametsi del Concilio di Trento. “Antonianum”* 72 (1997), pp. 637—672.

⁴⁴ CIC, can. 1117: “The form established above must be observed if at least one of the parties contracting marriage was baptized in the Catholic Church or received into it and has not defected from it by a formal act, without prejudice to the prescripts of can. 1127, § 2.”

⁴⁵ PONTIFICIUM CONSILIIUM DE LEGUM TEXTIBUS INTERPRETANDIS: *Litterae circulares mssae omnibus Conferentiis episcopalibus (variis linguis exaratae) quoad verba „actu formali defectionis ab Ecclesia catholica” (cann. 1086 §1, 1117 e 1124 CIC) et quaedam epistulae respicientis ipsarum litterarum*. ComCan 38 (2006), pp. 170—189; see A. PASTWA: *Forma kanoniczna małżeństw mieszanych w świetle motu proprio „Omnium in mentem” i nowszych uregulowań Stolicy Apostolskiej. “Studia Oecumenica”* 11 (2011), pp. 151—171.

⁴⁶ Cf. H. FRANCESCHI: *Il diritto al matrimonio...*, p. 306.

matrimonial law. Such research attitude is disclosed in the analyses of the *ius matrimoniale* system by Hector Franceschi, who firmly stands on the ground of anthropological realism, realism which, in turn, leads toward juridical realism.⁴⁷ It is suffice to say that the consecutive parts of the above mentioned canonist's study consistently reveal the *clou* of the subject matter issues. Indeed, the very announcing of the consecutive research stages (in the title), demonstrate step by step the segments of the answers to the previously asked question. The jigsaw puzzle of this interesting discourse, assembled together, is as follows: (1) *ius connubii* has content which it deserves, determined by the very nature of a human being, and in case of the baptized — through their status in the Church⁴⁸; (2) *ius connubii* finds its foundation in the complementarity between a man and a woman⁴⁹; (3) concretization of *ius connubii* in the matrimonial system⁵⁰ constitutes: (3a) fundamental right of person⁵¹; (3b) for Catholics — fundamental right of a Christian⁵²; (4) *ius connubii* — as an elementary law — is an inalienable, unalterable and permanent law.⁵³

To recapitulate we should state that *ius connubii* seems to be the first elementary right of a person and a Christian,⁵⁴ *ius fundamentale*, the orig-

⁴⁷ It is easy to discover the idea proximity of the outlook of the author with the thought of Javier Hervada, promoter of an important line in the science of canon law, who perceives the essence of matrimony to be the main domain of contemplation in matrimonial law. This prominent canonist, founder of the School of Navarra, perceives the personalistic realism in the depiction of *essentia matrimonii* as an immanency of law toward the personal reality of matrimony. See J. HERVADA: *Studi sull'essenza del matrimonio*. Milano 2000; see also C.J. ERRAZURIZ MACKENNA: *Essenza del matrimonio e sistema giuridico matrimoniale*. "Apollinaris" 75 (2002), pp. 597—609; F. PUIG: *La esencia del matrimonio a la luz del realismo jurídico*. Pamplona 2004; F. PUIG: *Realismo giuridico e dottrina canonistica contemporanea sull'essenza del matrimonio*. "Ius Ecclesiae" [henceforth: IusEcc] 16 (2004), pp. 433—453.

⁴⁸ H. FRANCESCHI: *Il diritto al matrimonio...*, p. 311.

⁴⁹ *Ibidem*, p. 315.

⁵⁰ *Ibidem*, p. 316.

⁵¹ *Ibidem*, p. 317.

⁵² *Ibidem*, p. 319.

⁵³ *Ibidem*, p. 321.

⁵⁴ Cf. K. LÜDICHE: *Kommentar zum c. 1058*. In: *Münsterischer Kommentar zum Codex Iuris Canonici*. Essen (Lfg. December 2013), 1058/2. Let us notice that *ius connubii* as an elementary right of a person and a Christian can be subject exclusively to precisely defined limitations, coherent with the entire system of canonical matrimonial law. The principles of interpreting these limitation can be brought don to three points: (1) In connection with regulation no. 10 of the CIC: "Only those laws must be considered invalidating or disqualifying which expressly establish that an act is null or that a person is effected" — every limitation of right to enter into marriage should be perceived as necessary and exceptional, and as such has to be stipulated by an act; (2) In connection with regulation no. 18 of CIC: "Laws which establish a penalty, restrict the free exercise of

inal content of which was by no means crystallized by the very evolving legal system of the Catholic Church, or even shepherds or Church community, but, first and foremost, the nature of man and woman's marriage, and in the face of the consequences of their baptism — the sacramental dimension of the relationship and realization of the matrimonial vocation. Within this context — as Klaus Lüdicke justly notices — *ius connubii* is a part of the elementary right of all believers to the redemptive means of the Church.⁵⁵ Here a subject matter context is delineated by the norms of the Code of Canon Law: “The Christian faithful have the right to receive assistance from the sacred pastors out of the spiritual goods of the Church, especially the word of God and the sacraments” (can. 213). “Sacred ministers cannot deny the sacraments to those who seek them at appropriate times, are properly disposed, and are not prohibited by law from receiving them” (can. 843 § 1). Pastors of souls and other members of the Christian faithful, according to their respective ecclesiastical function, have the duty to take care that those who seek the sacraments are prepared to receive them by proper evangelization and catechetical instruction, attentive to the norms issued by competent authority (can. 843 § 2).

When it comes to an adequate presenting of the depiction of *ius connubii* as a system principle it is spelled out by Pedro Juan Viladrich, a valued expert on marriage, one of the most prominent representatives of the “School of Navarra.”⁵⁶ The canonist, referring to, among others, John Paul II's ideas in the *Letter to Families*, established that the right to enter into marriage and its concrete realization is a determinant of sovereignty (!) of family.⁵⁷ With reference to this constructive thought it is worth to add: perception of *ius connubii* in the spirit of anthropological and legal realism guarantees that the *ius* will not be interpreted as a simple emanation of personal freedom, freedom law — without taking the truth about marriage and family into consideration. Therefore, what seems important is to state precisely: indeed, what we have in mind here is personal elemen-

rights, or contain an exception from the law are subject to strict interpretation” — limitations of *ius connubii* are subject to strict interpretation, since they limit a free usage of power; (3) In case of any doubt about a fact or the law practical or legal when it comes to person's capability entering into marriage should not be forbidden and its nullity should not be declared — here regulations no. 1084 § 2 and can. 1060 CIC: If the impediment of impotence is doubtful, whether by a doubt about the law or a doubt about a fact, a marriage must not be impeded nor, while the doubt remains, declared null (can. 1084 § 2). Marriage possesses the favor of law; therefore, in a case of doubt, the validity of a marriage must be upheld until the contrary is proven (can. 1060).

⁵⁵ K. LÜDICKE: *Kommentar zum c. 1058...*, 1058/1.

⁵⁶ See footnote no. 47.

⁵⁷ P.-J. VILADRICH: *La famiglia sovrana*. *IusEcc* 7 (1995), pp. 539—550.

tary right, however, not depicted individualistically but personalistically.⁵⁸ It means that a reference point for updating *ius connubii* remains always a natural “unity of two”⁵⁹ — a particular man (baptized) and a particular woman (baptized), with their unique matrimonial and family project (Christian family). The conclusion of the above mentioned study: “*ius connubii*” constitutes the foundation and principle of the matrimonial (canonical) system or an efficient criterion of pastoral activity,⁶⁰ should be exclusively referred to such an understanding of the right to enter into marriage.

Hermeneutical horizon of the *favor matrimonii* principle

In a quite recent commentary by an outstanding expert in matrimonial law Klaus Lüdicke to the wording of can. 1058: “All persons who are not prohibited by law can contract marriage”, from the array of interesting topics,⁶¹ one thread comes to the foreground. According to the German expert the normative opinion about *favor matrimonii* from can. 1060⁶² constitutes only a different aspect of *utterance* on *ius connubii* from can. 1058.⁶³ A propos the logic of “two sides to the coin” stressed in this commentary — let us add: rightly — it is difficult to overlook the fact that the inspiring value of this thought in the contemplation conducted here on the subject of *ius connubii* is hard not to appreciate. It was indirectly mentioned by Saint John Paul II in the famous passages of the 2002 and 2004 Addresses to the Roman Rota. Single articulations from the first and the second address lead toward personalistic foundation of the mentioned

⁵⁸ A. PASTWA: *Realism of Personalist Vision of Marriage: Legal-canonical Cogitations*. In: *Personalizmus v procese humanizácie ľudskej spoločnosti*. Ed. P. DANČÁK. Prešov 2014, pp. 343—351.

⁵⁹ Obviously, the natural institutional frames of “unity of two” are the derivative of its rooting in nature, so in the sexual structure of person-man and person-woman, in their sexual differentiation and complementarity.

⁶⁰ H. FRANCESCHI: *Il diritto al matrimonio...*, p. 323.

⁶¹ In the commentary there are such topics as, among others: (1) history of text (2) right to a church marriage (3) right to enter into marriage and presumption of validity (4) limitations of the right to enter into marriage (5) elementary right of a human being to enter into marriage (6) legal capacity (7) law of Eastern Catholic Churches. K. LÜDICKE: *Kommentar zum c. 1058...*, 1058/1—3.

⁶² “Marriage possesses the favor of law; therefore, in a case of doubt, the validity of a marriage must be upheld until the contrary is proven”; cf. CCEO, can. 779.

⁶³ K. LÜDICKE: *Kommentar zum c. 1058...*, 1058/2.

logics, embedded in the natural law. Such is the situation in the articulation affirming the *favor matrimonii* principle — in a Rotal allocution from 2004: “Indeed, this principle easily transcends the presumption of validity since it shapes from within all the canonical norms on marriage, both substantial and procedural. The *support* of marriage, in fact, must inspire the entire activity of the Church, of Pastors, of the faithful and of civil society: in a word, of all people of good will.”⁶⁴ Indeed this teaching should be understood within the context of a similar Papal articulation delivered in 2002 and focused on the title principle of *ius connubii*: “Against the truth of a conjugal bond, it is not right to invoke the freedom of the contracting parties, who, in freely consenting to that bond, were bound to respect the objective demands of the reality of marriage that cannot be altered in the name of human freedom.”⁶⁵

If, following Cardinal Zenon Grocholewski, we shall emphasize the constructiveness and creativeness of such delineated idea, which obviously is the fruit of choosing the personalistic optics (adequate anthropology) in a holistic legal and pastoral outlook on matrimony,⁶⁶ then what decides about the strength of the idea message here is the acceptance of the assumptions of “the hermeneutics of renewal in continuity.”⁶⁷ Since after all the image of the *favor matrimonii* principle, defined in the post-conciliar papal magisterium, constitutes a confirmation of an unchangeable, though rich canonist tradition:⁶⁸ from perceiving matrimony as *res favorabilis* to the contemporary promotion of “the culture of indissolubility.”⁶⁹ If so, then what would seem even more natural to function within the nomenclature is the traditional distinction: *favor iuris* “*antecedens*” — *favor iuris* “*consequens*.” It is about denominating a special legal protection, subject to which in the *ius matrimoniale* system are: in the first case — personal (private) freedom of entering into marriage, in the second — indissolubility (*indissolubilitas*) of the matrimo-

⁶⁴ JOHN PAUL II: *Allocutio ad Rotam Romanam habita* [29.01.2004]. AAS 96 (2004), pp. 349—350, n. 3.

⁶⁵ JOHN PAUL II: *Allocutio ad Romanae Rotae tribunal* [28.01.2002]. AAS 94 (2002), p. 344, n. 7.

⁶⁶ Z. GROCHOLEWSKI: *La función del juez en las causas matrimoniales*. “Ius canonicum” [henceforth: *IusCan*] 45 (2005), p. 25.

⁶⁷ BENEDICT XVI: *Allocutio ad Tribunal Rotae Romanae in inauguratione Anni Iudicialis* [27.01.2007]..., p. 90.

⁶⁸ The justification of *favor matrimonii* can be found in, for example, *Decretales Gregorii P. IX* (X, 4, 5, 7). It is also worth to pay attention to a classic depiction of *favor matrimonii* by Thomas Sánchez: *Favor matrimonii: [...] ita est matrimonii favor: irritum dissolvere ac validum tueri*. T. SÁNCHEZ: *De sancto matrimonii sacramento*. Venetiis 1614, lib. VII, disp. 100, n. 14.

⁶⁹ JOHN PAUL II: *Allocutio ad Romanae Rotae tribunal* [28.01.2002]..., p. 344, n. 7.

nial bond and stability (*stabilitas*) of the institution of matrimony.⁷⁰ In spite of, at first glance unquestionable, coherence of such construction, a doubt concerning the mutual correlation of referents of both concepts, especially when we take into consideration the historical and idea connotations of such and not different conceptual solutions adapted in the matrimonial law, might appear.

So the first concept: *favor iuris* “*antecedens*,” referring us directly to the semantic sphere of the *ius connubii* principle, evokes in a clear way the promotion of these personal ethic and spiritual values, which connect the conciliar and post-conciliar trend of personalistic thoughts with the matrimonial and family *communio personarum*.⁷¹ It is exactly this regularity that is emphasized by Giuseppe Dalla Torre, the investigator into the mentioned issues. Namely, referring to the imperative of the force connecting the fundamental human and Christian’s rights⁷² he aptly delivers a punch line suggesting that, within this perspective, the first part of can. 1060: *matrimonium gaudet favore iuris*, can be easily understood as a general rule (*formula riassuntiva*) of the entire discipline of the substantive matrimonial law, which stimulates and directs the realization of *ius connubii*.⁷³

Unfortunately, upon the second concept: *favor iuris* “*consequens*” — which reflects a closer/specific meaning of the *favor matrimonii* principle, to which the legal construction of presumption of marriage validity after expressing matrimonial consent directly refers⁷⁴ — there is clearly its

⁷⁰ See C.A. RECKERS: *De favore quo matrimonium gaudet in iure canonico*. Romae 1951, pp. 48—50. Let us notice that it would be indicated by the very construction of can. 1060, which, in case of the content, is almost identical with can. 1014 in CIC 1917; there is only a lack of a provision declaring the superiority of *privilegium fidei* over the presumption about the validity of marriage: *salvo praescripto* can. 1127 (*nota bene* content of can. 1127 in CIC 1917 corresponds with the content of can. 1150 in CIC 1983: *In re dubia privilegium fidei gaudet favore iuris*). U. NAVARRETE: *Favore del diritto (favor iuris)*. In: *Nuovo dizionario di diritto canonico*. Ed. C. CORRAL SALVADOR, V. DE PAOLIS, G. GHIRLANDA. Milano 1993, pp. 494—499.

⁷¹ Cf. U. NAVARRETE: *Favore del diritto...*, p. 494.

⁷² “All the Christian faithful have the right to be free from any kind of coercion in choosing a state of life.” CIC, can. 219.

⁷³ G. DALLA TORRE: *Il “favor iuris” di cui gode il matrimonio (cann. 1060 e 1101 § 1)*. In: *Diritto matrimoniale canonico*. Vol. 1. [Studi Giuridici. Vol. 56]. Città del Vaticano 2002, p. 223.

⁷⁴ It is about the words of the second part of can. 1060, understood in connection with the instruction presented by can. 1101 § 1: “The internal consent of the mind is presumed to conform to the words and signs used in celebrating the marriage.” See G. DALLA TORRE: *Il valore della presunzione del can. 1101 in una società secolarizzata*. In: *Matrimonio e Sacramento*. [Annali di dottrina e giurisprudenza canonica. Vol. 32]. Città del Vaticano 2004, pp. 64—66.

genetic rooting in the old reistic and institutional outlook on the reality of matrimony (contractualism).⁷⁵ It was revealed after the Second Vatican Council by both the opinion of prominent canonists,⁷⁶ more or less critical toward the allegedly apersonal or antipersonal profile of this principle, as well as the very works of the CIC Revival Committee on the codification of matrimonial law.⁷⁷ Reports from these works published in “Communicaciones” indicate (indirectly) toward the activity within the bosom of the “De matrimonio” Study Group of proponents of a thorough review of can. 1014, and it is according to a “personalistic” principle that suggests that presumptions should favour persons and not institutions.⁷⁸ What is interesting the mentioned relations do not bring any new information about the constructive polemics with this standpoint — for example, proving erroneousess of basically false contrasting in matrimony of what is personal with what is institutional⁷⁹ — therefore, it is difficult to resist the impression that for an effective “neutralization” of postulates set forth by minority it was necessary to resort to the “final” argument. It is a declaration that suggests that despite the fact that the mentioned canon originates in the law of God, it is embedded in this law through the relation with vital attributes of matrimony.⁸⁰

Harmonizing *vetera et nova* within the scope of the discussed *ius matrimoniale* system principles is the work of an outstanding canonist and Roman Rota auditor José Maria Serrano Ruiz. This excellent promoter

⁷⁵ See A. PASTWA: *Istotne elementy małżeństwa. W nurcie odnowy personalistycznej*. Katowice 2007, pp. 16—44.

⁷⁶ See, for example, B. PRIMETSHOFER: *Pastorale Anfragen an ein kirchliches Eherecht*. “Diakonia” 11 (1980), pp. 263—264; H. PREE: *Die Ehe als Bezugswirklichkeit — Bemerkungen zur Individual- und Sozialdimension des kanonischen Eherechts*. “Österreichisches Archiv für Kirchenrecht” 33 (1982), p. 393.

⁷⁷ Cf. J. KOWAL: *Conflitto tra “favor matrimonii” e “favor libertatis”?*. “Periodica de re canonica” 94 (2005), pp. 258—265.

⁷⁸ *Quod attinet ad canonem 1014, de favore quo gaudet matrimonium et de consequenti praesumptione validitatis matrimonii in casu dubii, donec contrarium probetur, salvo praescripto can. 1127, etsi opinio, recenter proposita, hanc scilicet praesumptionem esse abolendam cum praesumptiones non institutis, sed personis favere debeant, in coetu fuit considerata, canonem integrum servandum esse visum fuit, non tantum ad praecavendas frequentes incertitudines de statu matrimoniali, sed maxime quia canon non quidem est iuris divini, tamen nititur iure divino circa matrimonii proprietates essentielles* — ComCan 3 (1971), p. 70; cf. also ComCan 3 (1971), pp. 223—224. Janusz Kowal reveals that the ones who voted for the change of the *favor matrimonii* principle toward the *favor personae seu libertatis* principle were: ponens of the mentioned study team Peter Huizing and consultant- member of the team Stephen J. Kelleher. J. KOWAL: *Conflitto tra “favor matrimonii”...*, p. 263.

⁷⁹ See A. PASTWA: *Istotne elementy małżeństwa...*, pp. 204—209.

⁸⁰ ComCan 3 (1971), p. 70.

of personalism⁸¹ consistently opts to situate the *favor matrimonii* principle — in its both traditional semantic areas: *favor iuris* “*antecedens*” and *favor iuris* “*consequens*” — as part of the personalistically integrated system of matrimonial law. Indeed the evident, on the personal plane, proximity of *feri* and *facto esse* vistas of matrimony — formal reflection of unity of the event of a gift of persons in covenant (matrimonial consent) as well as further dynamics of giving oneself and accepting spouse (matrimonial state)⁸² — carries a crucial indicator of the same holistic and personal, that is, embedded in truth about person and its communion dimension, reading of basic fundamentals and norms of *ius matrimoniale*.⁸³ It turns out that only this perspective allows an adequate and complete image of *favor matrimonii* as a fundamental system principle, referring to the full image of matrimony: sacramental covenant of law — sacramental matrimonial and family community.⁸⁴

The “programme,” according to the Spanish canonist, integration of the *matrimonium in feri* and *matrimonium in facto esse* plains — within the personalistic key — gives, therefore, not only the guarantee of a break-away from the old legalistic and *quasi*-a priori depiction of matrimony. Emphasizing the dignity of a person (with the communion dimension inscribed in its ontic structure), makes it possible to, first and foremost, identify the special legal protection of no longer an abstract institution, but the freedom of persons entering into marriage. It becomes even more

⁸¹ See A. PASTWA: *Istotne elementy małżeństwa...*, pp. 209—275; IDEM: “*Intima personarum et operum coniunctio*” — personalistic profile of José Maria Serrano Ruiz’s idea of canonical matrimony. In: “*Servabo legem tuam in toto corde meo*”. *Księga pamiątkowa dedykowana Księdzu Profesorowi Józefowi Krzywdzie CM, Dyrektorowi Instytutu Prawa Kanonicznego UPJPII z okazji 70. rocznicy urodzin*. Ed. A. ZAKRĘTA, A. SOSNOWSKI. Kraków 2013, pp. 397—410.

⁸² J.M. SERRANO RUIZ: *L’ispirazione conciliare nei principi generali del matrimonio canonico*. In: *Matrimonio canonico fra tradizione e rinnovamento*. [Il codice del Vaticano. Vol. 6]. Bologna 1991², p. 78.

⁸³ It is worth noticing that this integrated image of matrimony verifies the accuracy of Robert Bellarmin’s concept regarding the presence of sacramentality in the matrimonial state: *Coniugii Sacramentum duobus modis considerari potest: uno modo, dum fit; altero modo, dum permanet postquam factum est. Est enim matrimonium simile Eucharistiae, quae non solum dum fit, sed etiam dum permanet, sacramentum est: dum enim coniuges vivunt, semper eorum societas sacramentum est Christi et Ecclesiae*. R. BELLARMIN: *De controversiis*. Venetiis 1721, Tit. 3: *De matrimonio*, controv. 2, c. 6.

⁸⁴ As José Maria Serrano Ruiz emphasizes this important determination obliges us to relevant legal and pastoral actions within the scope of preparation for the sacrament of matrimony. Specific pastoral conclusion emerge also from the fact that since in the concluded marriage a crucial attribute of indissolubility has radically person roots, then its existential and dynamic “embodiment” defines the matrimonial and family community of persons. J.M. SERRANO RUIZ: *L’ispirazione conciliare...*, pp. 78—79. Cf. G.L. MÜLLER: *La speranza della famiglia*. Roma 2014, p. 24.

obvious when we assume the simple consequences of the fact that this *par excellence* personal, so rational and free act of love covenant defines both the project of the matrimonial community of fate, as well as the dynamics of transformation of man and woman of a personal and interpersonal character — “wife’s husband” — “husband’s wife” — realized according to this project. In the light of the Second Vatican Council’s teaching the act of matrimonial consent cannot longer be perceived in a different way than as an act of personal development, directed at the good of spouses, offspring, family, Church and universal community.

The conclusion is obvious. *Favor matrimonii* in the role of the principle inspiring all precepts of matrimonial law⁸⁵ should be perceived/presented — not only (!) at the level of *favor iuris* “*antecedens*”, but also *favor iuris* “*consequens*” — always within the vista of *ius connubii*. Namely, applying in this (adequate) perspective the *favor matrimonii* principle — equals safeguarding the initial actualization and later developmental dynamics of *ius connubii*⁸⁶ in the establishment and existential growth of a precise matrimonial (and family) community of persons. Only understanding of this truth gives a chance to eliminate the temptation of an artificial contraposing of *favor matrimonii* with *favor libertatis*.⁸⁷ We can suppose that an authentic legal and pastoral promotion of *favor libertatis* — as an elementary postulate of *ius connubii* — will bear *in concreto* a fruit of respect, observance and effective protection of the matrimonial legal relation, designed and successively realized in the aforesaid freedom. Then the affirmation of dignity and rights of persons pervading the entire Church legal order will find a practical pastoral expression in a clear testimony to the truth, which is really needed by the contemporary world of unstable values.⁸⁸

Ius connubii — right to enter into authentic marriage

Ius connubii is part of the elementary right of all followers to the redemptive means of the Church.⁸⁹ This thread, mentioned before — let

⁸⁵ Cf. JOHN PAUL II: *Allocutio ad Rotam Romanam habita* [29.01.2004]..., pp. 349—350, n. 3

⁸⁶ J. I. BAÑARES: *El “favor matrimonii” y la presunción de validez del matrimonio contraído. Comentario al Discurso de Juan Pablo II al Tribunal de la Rota Romana de 29.I.2004*. *IusCan* 2005, pp. 254—255.

⁸⁷ Cf. J. KOWAL: *Conflitto tra „favor matrimonii”*..., pp. 269—270.

⁸⁸ Cf. J.M. SERRANO RUIZ: *L’ispirazione conciliare*..., pp. 72, 76.

⁸⁹ Cf. CIC, can. 213; CCEO, can. 16.

us add: correlate, canonically legitimated,⁹⁰ obligation of adequate⁹¹ preparation for marriage — constitutes the best exemplification of the legal and pastoral capacity of the paradigm, which Pope Francis in his first *Address to the Roman Rota* (2014) formulated as the universal principle: “The juridical dimension and the pastoral dimension of the Church’s ministry do not stand in opposition, for they both contribute to realizing the Church’s purpose and unity of action.”⁹² It means not less and not more that in the ecclesiastically dangerous⁹³ area of preparation of the young for marriage — in all three stages: farther, closer and direct (described in the *Familiaris consortio* adhortation) — we should assume in the “programme” the harmony and mutual intermingling of two planes of ecclesiastical activity: pastoral and legal, in the evangelical service to man, family, and the entire human society.

We can even risk to say that in the last statement there is the essence of a currently very desired “strategic” answer of the Church to the expansiveness of “postmodern reality”: in undermining the binding value systems, breaching successive ethical and moral borders, leaving canons of metaphysical understanding of human being to the benefit of giving culture the mandate to create a person, shocking with catchy but also dangerous slogans calling for equality of sex, individual autonomy and individual self-realization — namely, response of the Church to more than visible signs of loss of humans in the contemporary world. dehumanization of culture, crisis of value, crisis of community, crisis of marriage and family.

Let us say directly: an important element of the Church strategy — as a response to the contemporary serious civilizational challenges — is

⁹⁰ See CIC, [*Pastoral care and activities preceding concluding marriage*] can. 1063—1072; cf. CCEO, can. 783—789.

⁹¹ With reference to the vital 66th number of the *Familiaris consortio* adhortation, Italian canonist Arturo Cattaneo made an attempt to highlight the aspects of preparation for marriage, which as part of the formation meetings (what is important adapted to the level of the participants) require particular attention: 3.1. *Riscoprire la vera natura del matrimonio*; 3.2. *Chiarire il senso e la portata dell’amore sponsale*; 3.3. *Far comprendere l’indissolubilità come esigenza intrinseca del matrimonio*; 3.4. *Promuovere le virtù che sostengono l’impegno sponsale*; 3.5. *Sposarsi nel Signore per mezzo della Chiesa quale scelta consapevole*; 3.6. *La procreazione responsabile*. A. CATTANEO: *Gli incontri di preparazione al matrimonio: importanza, difficoltà e spunti di soluzione*. In: “*Iustitia et iudicium*”. *Studi di diritto matrimoniale e processuale canonico in onore di Antoni Stankiewicz*. Vol. 1..., pp. 379—385.

⁹² FRANCIS: *Allocutio ad omnes participes Tribunalis Romanae Rotae* [24.01.2014]. AAS 106 (2014), p. 89.

⁹³ “The changes that have taken place within almost all modern societies demand that not only the family but also society and the Church should be involved in the effort of properly preparing young people for their future responsibilities.” FC, n. 66.

the protection and promotion of *ius connubii* (fundamental principle of matrimonial law system and Church pastoral activity) in the troublesome “area” of care for family. It explains why the canonical matrimonial law is focused around the concept of matrimonial consent. If so, then it seems worth to realize that before this consent reaches its final stage of manifestation — in the positive answer to the sacramental question: “Do you take ‘x’ as your lawful wife/husband, to have and to hold, from this day forward, for better or for worse, for richer or for poorer, in sickness and in health, to love and cherish until death do you part?” — it has already gone through the stage of shaping. Therefore, an obvious conclusion: extensive and comprehensive preparation for matrimony should eventually focus on this culminating moment of taking by man and woman a free and responsible act of will in the matrimonial covenant, the fruit of which is the matrimonial and family community of the whole of life.⁹⁴

Therefore, among the criteria of the canonical preparation for matrimony there is one requirement that deserves particular attention: verification of bride and groom’s beliefs regarding the obligations that influence the validity of the matrimonial consent and sacrament. As Benedict XVI teaches, we should never forget that the direct aim of this preparation is leading to entering into true marriage in a free way, which means establishing between spouses a bond of justice and love, which is characterized by unity and indissolubility, takes the good of the spouses into consideration, as well as giving birth and bringing up offspring, and between the baptized constitutes one of the sacraments of New Covenant. It is not about directing an ideological message of external nature toward the bride and groom, nor is it about imposing a cultural model; it is about helping the betrothed discover the truth about the natural inclination and capability to become involved, which are inscribed in their relational being of a man and a woman.⁹⁵

Papal thought touches here upon the very foundation of law. The legal dimension — crucial component of matrimonial relation, depicted as an internal bond of justice between person — man and person — woman — is embedded in the natural potency of spouses to reciprocal personal commitment. Precise familiarization of the bride and groom with this area of issues (as part of the application of the following legal and canonical procedure) helps to avoid a situation, in which superficial relations, as well as sensorial and emotional agitation determine taking imprudent and in the final analysis irresponsible matrimonial decision.

⁹⁴ Cf. CIC, can. 1055 § 1; CCEO, can. 776 § 1.

⁹⁵ BENEDICT XVI: *Allocutio ad sodales Tribunalis Rotae...* [22.01.2011], pp. 110—111.

Here, following Benedict XVI we should conclude: the canonical dimension in the preparation for entering into matrimony is not an element that comes to the foreground. In the premarital preparation courses the legal and canonical issues have a very meager, if not insignificant, contribution. Indeed it is difficult to expect the bride and groom to have precise knowledge about the Church matrimonial law. It is quite normal that the future spouses are interested only in a limited scope in these issues, which are and should stay the domain of specialists. Simultaneously, it is not possible to avoid the truth — and such, general outlook the nuptials are eager to share — about the indispensability of legal actions preceding marriage, the aim of which is to ascertain that “nothing stands in the way of its valid and licit celebration.”⁹⁶

Unfortunately, this outlook very often undergoes a significant change, when from the level of “theory” we have to proceed to “practice.” The examination of spouses, the marriage banns and other opportune means for carrying out the necessary inquiries which are to precede marriage⁹⁷ (among others courses for the preparation of marriage canonical) — are often treated as requirements of an exclusively formal character. Benedict XVI notices that the betrothed usually expect that the priest proves magnanimous when it comes to allowing them to enter into marriage, be it because of the natural right of everyone to⁹⁸ enter into marriage. Whereas *de matrimonio* truth is indivisible: what does not exist on the one hand is “marriage according to life,” and on the other hand “marriage according to law” (we should once again repeat after the Pope). There is no denying the fact that the contemporary personal-centric⁹⁹ image of matrimony (and family) consistently presented by the Church — with highlighting the “perspective of relationality in accordance with justice”¹⁰⁰ and the principle of equality of matrimonial rights¹⁰¹ — clearly presents the fundamental truth: man and woman taking the matrimonial oath (expressing the act of consent), establish one and the only bond,¹⁰² on which the entire matrimonial and family dynamics of life and love is based.¹⁰³

⁹⁶ CIC, can. 1066; cf. CCEO, can. 785.

⁹⁷ See CIC, can. 1067; cf. CCEO, can. 784.

⁹⁸ Cf. CIC, can. 1058; CCEO, can. 778.

⁹⁹ See A. PASTWA: *Il matrimonio: comprensione personalistica e istituzionale*. IusEcc 25 (2013), pp. 387—408

¹⁰⁰ BENEDICT XVI: *Allocutio ad sodales Tribunalis Rotae...* [22.01.2011], p. 109.

¹⁰¹ Cf. CIC, can. 1135; CCEO, can. 777,

¹⁰² Cf. CIC, can. 1134, 1141; CCEO, can. 853; cf. A. PASTWA: “*Vinculum perpetuum*” (*kan. 1134*). In: *Małżeństwo na całe życie?*. Ed. R. SZTYCHMILER, J. KRZYWKOWSKA. Olsztyn 2011, pp. 219—236.

¹⁰³ BENEDICT XVI: *Allocutio ad sodales Tribunalis Rotae...* [22.01.2011], p. 109.

If we, therefore, accept the fact that the legal aspect is internally connected with the essence of matrimony,¹⁰⁴ it becomes clear why the canonical and pastoral preparation for entering into marriage puts in the center of attention the act of matrimonial consent (ecclesiastical act) and tied by the means of this act legal bond (home Church),¹⁰⁵ however the richness of community of the whole of life undoubtedly gives rise to a variety of approaches.¹⁰⁶

That is how we arrive at the culminating point in the quoted 2011 Rotal address. Benedict XVI, exposing the pretense (and falsehood) of excusing oneself with natural law, in order not to treat seriously the suggested canon law procedures, reminds — not only to the Church judiciary workers, but also all priests — the binding interpretation of can. 1058 CIC: “The right to marry, *ius connubii*, must be seen in this perspective. In other words it is not a subjective claim that pastors must fulfill through a merely formal recognition independent of the effective content of the union. The right to contract marriage presupposes that the person can and intends to celebrate it truly, that is, in the truth of its essence as the Church teaches it. No one can claim the right to a nuptial ceremony. Indeed the *ius connubii* refers to the right to celebrate an authentic marriage.”¹⁰⁷

Therefore, where is the most frequent source of an unconscientious, pseudo-pastoral approach to fulfilling the assumptions of *ius connubii*? It is a misunderstanding to talk about denying this fundamental subject law in a situation when there are not any conditions for its realization, namely when a person/persons obviously lack capability needed to enter into marriage or if the matrimonial intention, so the purpose connected with the betrothed’s aim is out of line with the natural reality of matrimony.¹⁰⁸

¹⁰⁴ “[...] the Church’s tradition clearly affirms the natural juridical character of marriage, that is, the fact that it belongs by nature to the context of justice in interpersonal relations”. BENEDICT XVI: *Allocutio ad Tribunal Rotae Romanae in inauguratione Anni Iudicialis* [27.01.2007]..., p. 90.

¹⁰⁵ JOHN PAUL II: *Allocutio ad Sacrae Romanae Rotae Tribunalis Praelatos Auditores, Officiales et Advocatos coram admissos* [28.01.1982]..., pp. 450—451, n. 4.

¹⁰⁶ It does not change the fact that: “Preparation for marriage, in its various phases described by Pope John Paul II in the Apostolic Exhortation *Familiaris Consortio* (22 November 1981), certainly has aims that transcend the juridical dimension because its horizon is constituted by the integral, human and Christian, good of the married couple and of their future children (cf. n. 66), aimed definitively at the holiness of their life (cf. CIC, can. 1063 n. 2)”. BENEDICT XVI: *Allocutio ad sodales Tribunalis Rotae...* [22.01.2011], p. 110.

¹⁰⁷ *Ibidem*, pp. 109—110.

¹⁰⁸ “La Chiesa non rifiuta la celebrazione delle nozze a chi è bene dispositus, anche se imperfettamente preparato dal punto di vista soprannaturale, purché abbia la retta intenzione di sposarsi secondo la realtà naturale della coniugalità.” JOHN PAUL II: *Allocutio ad Romanae Rotae iudices* [30.01.2003]. AAS 95 (2003), p. 397, n. 8.

Therefore, the Pope suggests to introduce, with due diligence, a programme of preparation for marriage: farther, closer and direct; additionally, regarding the last stage of preparation — meticulously fulfill the service concerning the betrothed's examination, and make sure that all necessary legal and pastoral activities are fulfilled before concluding the marriage.¹⁰⁹

What we touch upon here is an issue of a fundamental meaning, especially today, in the times of a deep crisis that the institution of matrimony and family goes through.¹¹⁰ Since, the aim of this legal procedure is highlighting the character of the project planned by the betrothed, whether it is authentically “matrimonial” and characterized by healthy realism.¹¹¹ It is, first and foremost, about making sure that, in a particular case, there is nothing in the way of a valid and decent entering into marriage. Here a very important apposition: “lega” means anything but “formalistic”, in the understanding of a bureaucratic activity, consisting exclusively in filling a questionnaire and answering routine questions.¹¹² Cracking down on this stereotype, the constructive and clear papal teaching does not require commentary: “[...] the dialogue, always conducted separately with each of the engaged pair without lessening the possibility of further conversations with the couple — requires an atmosphere of full sincerity in which stress should be put on the fact that the contracting parties themselves are those first concerned and first obliged in conscience to celebrate a valid marriage”¹¹³ and — let us add - to realize own original *ius connubii*. We are talking here — Benedict XVI delivers a conclusion — about “a unique pastoral opportunity — one to be made the most of with the full seriousness and attention that it requires — in which, through a dialogue full of respect and cordiality, the pastor seeks to help the person to face seriously the truth about himself or herself and about his or her own human and Christian vocation for marriage.”¹¹⁴

* * *

Pope Francis inscribes himself these days in such magisterial context with his optimistically sounding announcement of getting through to young people with a new form of “matrimonial catechumenate.” So char-

¹⁰⁹ Cf. BENEDICT XVI: *Allocutio ad sodales Tribunalis Rotae...* [22.01.2011], p. 110.

¹¹⁰ See W. GÓRALSKI, A. PASTWA: *Rodzina suwerenna — Kościół domowy. W nurcie współczesnej myśli prawnej Kościoła powszechnego i Kościoła w Polsce*. Katowice 2015.

¹¹¹ JOHN PAUL II: *Allocutio ad Romanae Rotae praelatos auditores* [27.01.1997]. AAS 89 (1997), p. 488, n. 4.

¹¹² BENEDICT XVI, *Allocutio ad sodales Tribunalis Rotae...* [22.01.2011], p. 111.

¹¹³ Ibidem.

¹¹⁴ Ibidem.

acteristic for the current pontificate sense of sensitivity to “the signs of times” prompts the current highest Shepherd and Legislator to make sure that the Church message addressed to the young is focused on beautifully natural reality of matrimony and family, with their inseparable transcendental dimension. What has to serve this ambitious goal — in the face of blatant pluralism of individual “projects” of realization of *ius connubii* — is: both Francis’ invitation of the world of canon law to extend an idea/programme support for the planned reform (the subject matter of the recent Rotal addresses proves that more than enough), as well as the direct address of the Pope to parish priests, pastoral workers and workers of institutions responsible for pastoral care of families (and it is at the level of “all Church structures”¹¹⁵), so that the results of their engagement can be “the preparatory programs for the sacrament of marriage ever more effective, not only for human growth, but above all for the faith of the engaged couple.”¹¹⁶ The fundamental objective “of a true catechuminate of future spouses”¹¹⁷ has been already delineated: “helping engaged couples to know and live the reality of marriage which they intend to celebrate, in order that they may be able to do so not only validly and lawfully, but also fruitfully, and that they may be willing to make this celebration a stage on their journey of faith.”¹¹⁸

¹¹⁵ FRANCIS: *Allocutio ad sodales Tribunalis Romanae Rotae* [22.01.2016]..., p. 139.

¹¹⁶ FRANCIS: *Address to the Officials of the Tribunal of the Roman Rota for the Inauguration of the Judicial Year* [21.01.2017]...

¹¹⁷ FRANCIS: *Address to participants in the course on the marriage process* [25.02.2017]...

¹¹⁸ FRANCIS: *Address to the Officials of the Tribunal of the Roman Rota for the Inauguration of the Judicial Year* [21.01.2017]... “In order to achieve this, there is a need for people with specific abilities and appropriate preparation in this service, wherein there is a favourable synergy between priests and married couples.” *Ibidem*

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ANDRZEJ PASTWA

Ius connubii Today — Legal and Pastoral Perspective

Summary

The inspirations that originate from the papal magisterium suggest — in the study of this important and timely topic — contemplation of the following issues: firstly a glance at *ius connubii* as a system principle, then taking note of *iunctim* two principles of matrimonial law: *ius connubii* and *favor matrimonii*, finally highlighting the implications of recognition of the right to enter into an authentic marriage in *ius connubii*. We are free to accept that Pope Francis inscribes himself these days in such magisterial context with his optimistically sounding announcement of getting through to young people with a new form of “matrimonial catechuminate.” So characteristic for the current pontificate sense of sensitivity to “the signs of times” prompts the current highest Shepherd and Legislator to make sure that the Church message addressed to the young is focused on beautifully natural reality of matrimony and family, with their inseparable transcendental dimension. What has to serve this ambitious goal — in the face of blatant pluralism of individual “projects” of realization of *ius connubii* — is: both Francis’ invitation of the world of canon law to extend an idea/program support for the planned reform (the subject matter of the recent Rotal addresses proves that more than enough), as well as the direct address of the Pope to parish priests, pastoral workers and workers of institutions responsible for pastoral care of families (and it is at the level of “all structures of the Church” — *Address to the Roman Rota*, 2016), so that the results of their engagement can be “more and more effective [...] programs of preparation to the sacrament of matrimony, for the development of not only people but, first and foremost, of the faith of the betrothed” (*Address to the Roman Rota*, 2017). The fundamental aim of “matrimonial catechuminate” has been already defined: “helping the betrothed to get to know the reality of marriage, which they desire to enter into — and to live this reality — to help them make it happen not only in a valid and coherent with the law way, but also fruitful, and to help them to be ready to treat marriage as a stage of their way of faith” (*Ibidem*).

ANDRZEJ PASTWA

Lo *Ius connubii* oggi — prospettiva giuridico-pastorale

Resume

Les inspirations découlant du magistère papal suggèrent — dans l'examen du présent sujet important et actuel — de réfléchir sur les questions suivantes: en premier lieu, traiter *ius connubii* comme le principe de système, ensuite apercevoir *iunctim* de deux principes du droit matrimonial: *ius connubii* et *favor matrimonii*, enfin, mettre en relief l'implication de reconnaître dans *ius connubii* le droit de conclure un mariage authentique. Il est permis de dire que dans un tel contexte s'inscrit aujourd'hui le pape François avec son annonce optimiste visant à aboutir aux jeunes gens avec une nouvelle forme de «catéchuménat matrimonial». Le sens de sensibilité aux «signes du temps», tellement caractéristique du pontificat actuel, suggère au Pasteur Suprême et Législateur actuel que le message ecclésiastique adressé aux jeunes soit focalisé sur la beauté de la réalité naturelle du mariage et de la famille, y compris leur dimension transcendante inséparable. Pourtant, ce qui doit servir cet objectif ambitieux — face au pluralisme, se jetant aux jeux, de «projets» individuels de la réalisation de *ius connubii* — ce sont: l'invitation, lancée par le pape François, du monde de la canonistique à prêter son assistance d'idées/ de programme à la réforme planifiée (la thématique des récents discours de la Rote en témoigne fort remarquablement), et aussi le fait que le pape s'adresse directement aux curés, aux employés liés à la prêtrise et aux institutions responsables de la prêtrise des familles (et c'est au niveau de «toutes les structures de l'Église» — Discours à la Rote romaine, 2016) pour que le résultat de leur engagement deviennent «les programmes de plus en plus efficaces de la préparation au mariage, à la croissance non seulement humaine, mais avant tout celle des fiancés» (Discours à la Rote romaine, 2017). L'objectif fondamental du «catéchuménat matrimonial» a déjà été indiqué: «aider les fiancés à connaître la réalité du mariage qu'ils projettent de conclure — et de la vivre — pour qu'ils puissent le faire non seulement d'une façon importante et conforme à la loi, mais aussi fructueuse, et qu'ils soient prêts à traiter le mariage comme une étape de leur chemin de foi» (ibidem).

Mots clés: système du droit conjugal canonique, principe *ius connubii*, principe *favor matrimonii*, préparation au mariage, nouveau «catéchuménat matrimonial»

ANDRZEJ PASTWA

Lo *Ius connubii* oggi — prospettiva giuridico-pastorale

Sommario

Le ispirazioni che scaturiscono dal magistero pontificio suggeriscono — nell'elaborazione del presente argomento importante ed attuale — di riflettere sulle questioni seguenti: prima vedere lo *ius connubii* come principio sistemico, poi notare lo *iunctim* dei due principi del diritto matrimoniale: *ius connubii* e *favor matrimonii*, infine evidenziare

l'implicazione del riconoscimento nello *ius connubii* del diritto di celebrare un matrimonio autentico. È lecito assumere che proprio in un simile contesto magisteriale si iscrive oggi papa Francesco con il suo annuncio dal suono ottimistico di arrivare ai giovani con la nuova forma di “catecumenato matrimoniale”. Questa sensibilità ai “segni del tempo”, così caratteristica per l'attuale pontificato, suggerisce all'attuale Pastore e Legislatore supremo che il messaggio ecclesiastico indirizzato ai giovani venga focalizzato sulla bellezza della realtà naturale del matrimonio e della famiglia con la loro inscindibile dimensione trascendente. A tale scopo ambizioso — dinanzi al pluralismo lampante dei “progetti” individuali di realizzazione dello *ius connubii* — devono servire: sia l'invito di Francesco al mondo della canonistica ad impartire il sostegno ideologico/programmatico della riforma prevista (lo dimostra persino in modo oltremodo chiaro la tematica delle ultime allocuzioni rotali), sia il rivolgersi del papa direttamente ai parroci, a coloro che lavorano nella pastorale e nelle istituzioni responsabili della pastorale delle famiglie (e cioè a livello di “tutte le strutture della Chiesa” — Allocuzione alla Rota Romana, 2016), affinché il risultato del loro impegno siano gli “itinerari sempre più efficaci di preparazione al sacramento del matrimonio, per la crescita non solo umana, ma soprattutto della fede dei fidanzati” (Allocuzione alla Rota Romana, 2017). Lo scopo essenziale del “catecumenato matrimoniale” è stato già delineato: “aiutare i fidanzati a conoscere e a vivere la realtà del matrimonio che intendono celebrare, perché lo possano fare non solo validamente e lecitamente, ma anche fruttuosamente, e perché siano disponibili a fare di questa celebrazione una tappa del loro cammino di fede” (ibidem).

Parole chiave: sistema del diritto canonico matrimoniale, principio dello *ius connubii*, principio del *favor matrimonii*, preparazione al matrimonio, nuovo “catecumenato matrimoniale”