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Part One

Philosophical Thought

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Family and *Polis* The Socio-Philosophical Legacy of Plato and Aristotle at the Present Time

Abstract: The current debate on family is subject to rapid social changes which have had colossal negative impact on economy itself and on the economy of entire countries. The purpose of social and family life is not to bound, but to develop the human being. Thoughts about the future of the family are associated with education in the very sense that is pointed out by human experience. It can be said that Aristotle's legacy is as follows: for subject, it is necessary to reflect *pro futuro* basic demand of how to be "together with others," to act "with others" and, on which depends realization and completion of the subject's being.

Keywords: *polis*, family, man

Introduction

The dynamic nature of social life causing momentary tensions between an individual and the community requires adequate philosophical reflection which would bear in mind that a man projects his or her future adequately on the basis of constant retrieving of the past. The isolation of history obstructs the use of experience of previous generations and produces dangerous totalitarian ideologies. This paper focuses on the philosophical and social legacy of Plato and Aristotle which cannot remain unnoticed in the current discussion about the role and meaning of the family. It highlights the fact that decisions of an individual are made with regards to the family as the oldest social group which is

closely interconnected by various relations, functions, and activities that satisfy the needs of family members and society as a whole.

The current debate on family is subject to rapid social changes which have had colossal negative impact on economy itself and on the economy of entire countries: a sharp decrease in the number of large families, rising age of the first-time motherhood, changes in sexual behavior, increasing number of children born outside marriage, secularization, divorce explosion, a shift in the women's approach to maternity from a lifelong mission to merely a short episode, and, above all, the absolutization of a decision made by an individual is no longer irreversible. Although the social conditions after World War II are characterized by the boom of family life, the unprecedented increase in the birth rate, economic growth which is associated with the rise of living standards of broad social classes (mainly in the US and in the countries of Western and Northern Europe), absolutization of the will of an individual who is oriented towards production, consumption, and profit, as well as strengthening the role of the state in the social sphere have created conditions where the so-far successful solutions to problems are failing. These changes have also been reflected in the arrangement of marital relations, that is, in the move from hierarchical to egalitarian relationship between the partners, the shift from the relationship of normative definition of roles to the relationship which respects individuality and individual roles of partners. However, the most problematic issue seems to be an egoistic emphasis on benefits of the marriage, on taking from the relationship more than on giving or self-giving of one to another.¹

Polis—Good for Everyone

Decomposition of the tribal society led to the creation of *polis* which is characterized by a rapid development of tools, consistent division of labor, the use of slaves for agricultural and craft work, development of trade, introduction of cash economy, and colonization of the nearby areas. All these factors brought economic prosperity. The head of *polis* was god who protected it.²

¹ The paradox is that unwillingness to share and to keep profit to oneself leads to endangerment of the involved by poverty, as he or she loses synergistic effect. Cf. Mária Potočárová, Ladislav Baranyai, "Rodina a výchova," in *Európske pedagogické myslenie od moderny po súčasnosť*, ed. Blanka Kudláčová and Andrej Rajský (Trnava: Typi Universitatis Tyrnaviensis, 2012), 147–48.

² Cf. Irina Dudinská, "Rodina ako sociálno-filozofická téma vo filozofii Sokrata," Platóna a Aristotela, in *Rodina v spoločenských premenách Slovenska* (Trnava: Vydavateľstvo SAV, 2010), 203.

According to Plato, *polis* has a divine nature and ensures full life as well as satisfaction of one's needs. A man is not self-sufficient; therefore he or she associates with others and creates a community where labor is redistributed and individuals specialize in certain field. Plato developed a model of a perfect *polis* which had three functions.

1. Provision of food and profit for citizens.
2. Protection of the state from the outside.
3. Rational government of the state.³

According to the stated functions, Plato divided citizens into three social classes: producers, auxiliaries–guardians, and guardians–rulers.

The aim of the state is to secure human welfare and needs of people, while morality plays an important role in its actions. According to Plato, communities of people are destroyed mainly because of materialist interests that influence human behavior and action. Therefore, the primary role of the ruler is to ensure education for guardians and other people. Guardians did not have right to private property, which was supposed to protect them against materialist interests and the damaging effect. Plato claims that community where people are divided into the rich and the poor is not one, but there are two communities.⁴ Women can also be part of the army if they are suitable for the job. There is no family in the military society. There is only a connection of man and woman which is supposed to bring children. It is a “marriage” that does not lead to the family.

It is for you, then, as their lawgiver, who have already selected the men, to select for association with them women who are so far as possible of the same natural capacity. Now since none of them will have any private home of his own, but they will share the same dwelling and eat at common tables, the two sexes will be together; and meeting without restriction for exercise and all through their upbringing, they will surely be drawn towards union with one another by a necessity of their nature—necessity is not too strong a word, I think?⁵

This connection is prepared by rulers who aim to connect only the best.

It follows from what we just said that, if we are to keep our flock at the highest pitch of excellence, there should be as many unions of the best of both sexes, and as few of the inferior, as possible, and that only the offspring of the better unions should be kept.⁶

³ Cf. Hans Joachim Strömg, *Malé dejiny filozofie* (Praha: ZVON, 1995), 125.

⁴ Cf. Jan Patočka, *Aristoteles* (Praha, Vyšehrad: Vyšehrad, 1994), 23.

⁵ *The Republic of Plato*, trans. with introduction and notes Francis MacDonald Cornford (Oxford: OUP, 1945), 157.

⁶ *The Republic of Plato*, 159.

According to Plato, women and men may bear children only in years of the prime physical and intellectual vigor. The best years for women are between 20–30 of their age and men may continue until they are 50 years old. In case that they conceive a child above or below the prescribed ages, the child should not see the light, and if the child is born, he or she cannot be maintained. The proper officers will take care for children. However, officers will take care only for healthy offspring of the best citizens; whereas the remaining children shall be hidden away in some mysterious and unknown place. Children are for a reasonable time breastfed by mothers who are full of milk, but no mother shall know her own child.⁷

From an early age, children are brought up in a way that would make them the best guardians.

Horses, which they must be taught to ride at the earliest possible age; then, when they are taken to see the fighting, their mounts must not be spirited chargers but swiftest we can find and the easiest to manage. In that way they will get a good view of their future business, and in case of need they will be able to keep up with their older leaders and escape in safety.⁸

The common ownership of property, women, and common education of children are required, because thanks to them the state becomes a family for everyone.

In the ideal republic, each class of citizens excels in certain virtue. Producers must excel in modesty, guardians in bravery, and rulers in wisdom. Plato suggests the method how to select the right class for every individual. He claims that it is important to educate children of any origin and to educate both boys and girls. Education is the responsibility of the state.⁹ The basic subject is gymnastics, because it forms the body and teaches children hardness as well as bravery. The second subject is music which forms the soul and teaches modesty and gentleness. Later, other subjects are added: mathematics, dialectics, training in pain, asceticism, and effort. At the age of twenty, a strict exam takes place which excludes students who do not meet all requirements for the ruling positions. Students who pass the exam continue in education for another ten years. Afterwards, a further selection shall be made and these students continue in the study of philosophy for another five years. Young men who accomplish this education have 35 years and do not have any experience. Therefore, they are supposed to gain experience of life for the next 15 years. Then, experienced 50 years old men, who are educated in theory as well as practice, are automatically

⁷ Cf. *The Republic of Plato*, 160–61.

⁸ *The Republic of Plato*, 170.

⁹ Lucia Bokorová, *Dejiny výchovy a vzdelávania I* (Trnava: Trnavská univerzita v Trnave, 2013), 24.

introduced into the leading positions.¹⁰ Plato's notion of education is inspired by Spartan education. He demands that rulers be trained as professional fighters who would be able to act against every enemy—from outside or inside.

However, Plato's pursuit for perfect organization of life brings danger of totality. His ideas on community are dominated by a political principle which dictates how to educate soul in order to secure stability of the state. Both girls and boys "were to be taken to the wars on horseback to watch the fighting, and, when it was safe, brought close up like hounds to be given a taste of blood."¹¹ The characteristic feature of the totalitarian education is intense and permanent mobilization.¹² The ideal republic of Plato treats people in the same way as a wise and strict shepherd treats his sheep—not too harsh, but he must keep a distance. While restoring this ideal state, all seeds and elements of disunity and decay must be eliminated; which means that this perfect state shall be restored with an image of Sparta in mind. According to Plato, first comes the functioning of the state as a whole and only then the proper life of a man which is presented as inserting of a wheel into the gear.

According to Karl Popper, Plato's totalitarianism is honest, as superiority of one class over another is aimed for the stability of the whole and not for exploitation of the working classes.¹³ Exploitation is held within limits that are supposed to secure stability of the whole, because if guardians attempt to get more, it can easily happen that they will have nothing.

[...] if ever a Guardian tries to make himself happy in such a way that he will be a guardian no longer; if, not content with the moderation and security of this way of living which we think the best, he becomes possessed with some silly and childish notion of happiness, impelling him to make his power a means to appropriate all the citizens' wealth, then he will learn the wisdom of Hesiod's saying that the half is more than the whole.¹⁴

This restriction of class privileges seeks stability of the whole, too. Thus, it is not strict utilitarianism in the form of collective selfishness, but rather an attempt to demonstrate the meaning of the responsible acceptance of one's role in the whole universe.¹⁵

Even if Plato's philosophy is chronologically very distant, it still has something to say. Plato's philosophy emerges at the time when *polis* world disappears

¹⁰ Strörig, *Malé dejiny filozofie*, 125.

¹¹ *The Republic of Plato*, 258; cf. 167.

¹² Cf. Karl Popper, *Otevřená společnost a její nepřítel I.*, 54.

¹³ Cf. Popper, *Otevřená společnost*, 102.

¹⁴ *The Republic of Plato*, 167–68.

¹⁵ Cf. Daniel Slivka, "Od filozofickej hermeneutiky k biblickej hermeneutike," in *Humanum: Międzynarodowe Studia Społeczno-Humanistyczne* 2 (2008): 35–45.

and when this passive universe is replaced by our human world of freedom and responsibility. However, this freedom is not understood as absolute freedom and boundless independence, because freedom is not deity, yet it is a route to something divine.¹⁶

Aristotle: Every State Is Made up of Households

When Aristotle criticized Plato's totalitarian reforms of family life, the central issue was whether Plato's suggestions were good or bad for *polis*, that is for society, as far as one can live one's life only in community and society, that is, to live with others. According to Aristotle, diversity of families is conditioned by providing with basic needs for life, reproduction and raising children. Family, where relationships are given by love,¹⁷ cannot provide basic needs sufficiently and hence it joins in *komé* (village, family community, city district) and more *komai* create *polis* which is complete and perfect community and almost self-sufficient with regard to the needs.¹⁸ Therefore, the aim of joining is to survive, not to gain.

Aristotle, tutor of Alexander the Great, criticizes Plato's concept of an ideal state in his work *Politics*. Aristotle claims that "the state is made up of households."¹⁹ Aristotle describes an ideal state, too. He divides constitutions according to the number of rulers as follows: monarchy—one ruler, aristocracy—rule of the few, *politeia*—rule of many. On the other hand, there are deviant opposites: tyranny, oligarchy, and democracy. He does not prefer any of the stated rules, but he claims that constitution has to follow needs of a certain nation.²⁰ The analogy of these constitutions can be found even in households. For example, relationship between father and son resembles kingdom, because the task of the father is to take care of his children. However, in Persian family the relationship of father and son resembles tyranny as father treats his children as slaves. Moreover, man rules slaves and this relationship is similar to tyranny, as well. The relationship of a husband to his wife has features of aristocracy, because the husband rules the wife in certain matters, but she dominates in other spheres. Thus, everyone possesses what belongs to them by the law. They help one another

¹⁶ Cf. Jan Patočka, *Platón* (Praha: SPN, 1992), 24.

¹⁷ Cf. Aristotle, *Politics*, trans. Benjamin Jowett (Kitchener: Batoche Books, 1999), 19.

¹⁸ Cf. *ibid.*, 5.

¹⁹ *Ibid.*, 6.

²⁰ Strörig, *Malé dejiny filozofie*, 137.

er and both of them contribute to the household according to their possibilities. If husband wants to rule over the whole household, he destroys the relationship and thus changes aristocracy to oligarchy. However, it is also oligarchy when the household is ruled by a woman (it is rare, but it usually happens when woman brings great fortune to the marriage). Her rule is oligarchy, because it is based on power and wealth. The mutual relationship of brothers demonstrates features of timocracy as in timocracy they count as equals. A household without master where all members are equal is democracy.²¹ According to Aristotle, monarchy, aristocracy or *politeia* are suitable rules. He states that “father is the author of being which is esteemed the greatest benefit and of maintenance and education; and by the law of nature the father has the right of rule over his sons, ancestors over their descendants, and the king over his subjects.”²² The family consists of a father—head and master of the family, wife, and slaves.²³ “Fewest possible parts of a family are master and slave, husband and wife, father and children.”²⁴ According to Aristotle, family is an economic cell of the state, because the basis of the state is organized and maintained around the family. In family, there is too strong unity of elements—these are relations between husband and wife, parent and child, master and slave. Due to these relations and their unity, family cannot be community. According to Aristotle, the state is the only true community. Only a master—a father who has dominant position in the family stands out from family and enters the state. Even if a wife is able to think in contrast to a slave, she cannot make decisions.²⁵ “A husband and father rules over wife and children. The male is by nature fitter for command than the female.”²⁶ Wife, as well as other members of the family, does not enter politics. Family fulfills primarily a biological function. Economic function of family is wealth that is necessary for free time and it is a fundamental determinant for the political life.²⁷

According to Aristotle, it is important that people enter marriage in their best age and at the best time (during the best season). He emphasizes that husband and wife must grow old together at the same time, they cannot enter marriage while they are too young, and the age gap between father and children cannot be too wide. Aristotle suggests that girls should marry at the age of 18 and men at the age of 37. Wedding should take place in winter months. Pregnant

²¹ Aristotle, *Nicomachean Ethics*, trans. Irwin Terence (Indianapolis: Hackett Publishing Company, Inc., 1999), 168.

²² Aristotle, *Nicomachean Ethics*, 169.

²³ Milan Fula, *Antropológia ženy a náuka Jána Pavla II* (Bratislava: DON BOSCO, 2004), 46.

²⁴ Aristotle, *Politics*, 5.

²⁵ Cf. Petra Muráriková, *Hľadanie seba samej. Otázka identity ženy v súčasnosti* (Bratislava: IRIS, 2014), 51.

²⁶ Aristotle, *Politics*, 19.

²⁷ Dudinská, “Rodina ako sociálno-filozofická téma,” 207.

women shall take care of themselves; they should remain physically active and take sufficient food. Following these rules, their offspring shall be strong and healthy. Sick and weak children will not be maintained. Moral rules do not allow leaving a child when the couple has too many children. When the number of children rises above the specified limit, abortion shall be performed before sense and life have begun.²⁸ Children are mutual good for parents. Parents love them as themselves, because children are a kind of the other Self for parents. Children create a strong bond between parents. Parents are the authors of their being, therefore, children must pay respect to their parents as they deserve it.²⁹

Furthermore, Aristotle describes an ideal education. According to him, it is very important to provide children with the food which has most milk as well as to secure enough physical activity. It is also necessary to accustom children to the cold from their earliest years. Until they are five years old parents should not demand study or labor from children, but they should secure sufficient motion by means of play. Children should stay at home until they are seven years old. It is necessary to direct the education as children must not meet slaves more than it is necessary and hear vulgar speech or see vulgar things. At the age of seven, every child must enter education. Aristotle was convinced that education shall be public and uniform.³⁰ “[...] And since the whole city has one end, it is manifest that education should be one and the same for all, and that it should be public, and not private—not as at present, when every one looks after his own children separately, and gives them separate instruction of the sort which he thinks best.”³¹

Aristotle values marriage and family, and criticizes Plato for his request to sacrifice marriage as well as private property to the state. He emphasizes that the state community needs to be divided into small communities—households.³² “[...] for man is naturally inclined to form couples—even more than to form cities, inasmuch as the household is earlier and more necessary than the city.”³³ According to Aristotle, common things receive less care. Thus, if women, children, and property belong to everyone, everyone would neglect them and rely on someone else to take care of them. He claims that having women and children common destroys love. He criticizes Plato’s idea that parents shall not know their children as the offspring resembles their parents.³⁴

It can be said that Aristotle’s legacy is as follows: for subject, it is necessary to reflect *pro futuro* basic demand for being *together with others*, and acting *with others* on which depends the realization and completion of the subject’s being.

²⁸ Cf. Aristotle, *Politics*, 178.

²⁹ Cf. Aristotle, *Nicomachean Ethics*, 169.

³⁰ Cf. Aristotle, *Politics*, 179.

³¹ *Ibid.*, 181.

³² Cf. Strörig, *Malé dejiny filozofie*, 137.

³³ Aristotle, *Nicomachean Ethics*, 169.

³⁴ Cf. Aristotle, *Politics*, 22–23.

Conclusion

The purpose of social and family life is not to bound, but to develop the human being. Thoughts about the future of the family are associated with education in the very sense that is pointed out by human experience. Man cannot withdraw from this sense without destroying his own self.

It is essential for the personal subject to be a part of community, to be *together with others* and to act *with others* as it is inevitable for the realization and fulfillment of one's being. "The inclination to give is rooted in the depths of the human heart: every person is conscious of a desire to interact with others and everyone finds fulfillment in a free gift of self to others."³⁵ Self-giving and love imply the definition of a person. "The person is a being for whom the only suitable dimension is love. We are just to a person if we love him. This is as true for God as it is for man."³⁶ "Self-giving love is the oath along which human freedom finds its fulfillment in human flourishing."³⁷ "Solidarity means happiness!"³⁸

The first natural place where a person (me) meets others (you) is family. There is no other natural community which would affect human being and human life as much as marriage and family.

Among these many paths, *the family is the first and the most important*. It is a path common to all, yet one which is particular, unique and unrepeatable, just as every individual is unrepeatable; it is a path from which man cannot withdraw. Furthermore, she knows that *a person goes forth from the family in order to realize in a new family unit his particular vocation in life*. Even if someone chooses to remain single, the family continues to be, as it were, his existential horizon, that fundamental community in which the whole network of social relations is grounded.³⁹

Fichte expressed the specific nature of personal relationship by saying: "A man [...] becomes man among people—there would be more of them if

³⁵ *Posolstvo Svätého otca Jána Pavla II. na pôstne obdobie 2003*, 41, accessed September 19, 2015, <https://www.kbs.sk/obsah/sekcia/h/dokumenty-a-vyhlasenia/p/dokumenty-papezov/c/posolstvo-post-2003>.

³⁶ Ján Pavol II, *Prekročiť prah nádeje*, 178.

³⁷ George Weigel, *Svedok nádeje. Životopis Jána Pavla II. III. diel* (Bratislava: Slovart, 2001), 256.

³⁸ Domenico del Rio, *Ján Pavol II. Očami novinára* (Trnava: SSV, 2002), 149.

³⁹ Ján Pavol II, *List rodinám* (Trnava: SSV 1994), 8. Cf. John Paul II, Letter to Families *Gratissimam Sane* from Pope John Paul II, accessed September 19, 2015, http://w2.vatican.va/content/john-paul-ii/en/letters/1994/documents/hf_jp-ii_let_02021994_families.pdf.

they have ever been people.”⁴⁰ A man must be called, invited to free decisions, advised and educated, and this can happen only in the company of other people who indeed represent certain limits, but they present also opportunity.⁴¹ If a man does not accept the existence of other man, this person will not be sure about his or her own self, he or she will not find the whole truth about his or her own being and will not discover the extent of his or her own responsibility for his or her own being as well as for being of others.

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⁴⁰ Jonahh Gottlieb Fichte, *Grundlange des Naturrechts*, WW III, 39, in Emerich Coreth, *Co je člověk?* (Praha: Zvon 1994), 160.

⁴¹ “Experiencing another person through the prism of values is inextricably connected with the experience of a hope. It is always the case that either I propose a value for the other person to realize and I have a hope that the other will take up my proposition, or the other proposes something similar to me, cherishing a similar hope.” Józef Tischner, “Etyka wartości i nadziei,” in *Wobec wartości* (Poznań: W drodze, 1982), 87.

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Pavol Dancák

Famille et *polis*
Patrimoine sociophilosophique de Platon et d'Aristote
à l'époque contemporaine

Résumé

Le débat actuel sur la famille subit de rapides changements sociaux qui ont eu une énorme influence négative sur l'économie elle-même et sur l'économie des pays entiers. L'objectif de la vie sociale et familiale n'est pas d'entraver, mais de développer l'être humain. Les réflexions sur le futur de la famille sont liées à l'éducation dans le sens indiqué par l'expérience humaine. On peut dire que le patrimoine d'Aristote est suivant : il est nécessaire pour un sujet de réfléchir « pro futuro » sur le besoin fondamental d'être « avec les autres », de fonctionner avec « les autres » parce que c'est un élément dont dépendent la réalisation et l'accomplissement de ce sujet.

Mots clés : *polis*, famille, homme

Pavol Dancák

Famiglia e *polis*
Eredità socio-filosofica di Platone e di Aristotele
nei tempi odierni

Sommarío

L'attuale dibattito sulla famiglia è oggetto di rapidi cambiamenti sociali che hanno avuto un enorme influsso negativo sull'economia in sé e sull'economia di interi paesi. Lo scopo della vita sociale e familiare non è impedire, ma consentire lo sviluppo dell'uomo. Le riflessioni sul futuro della famiglia sono collegate all'educazione nel senso indicato dall'esperienza umana. Si può dire che l'eredità di Aristotele sia la seguente: per il soggetto, è necessario considerare "pro futuro" i requisiti fondamentali dello stare "insieme agli altri" e dell'agire "insieme agli altri", poiché da questa considerazione dipende la realizzazione e il completamento dell'esistenza del soggetto stesso.

Parole chiave: *polis*, famiglia, uomo

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Family in the Contemporary World Catholic Social Teaching and Gender

Abstract: Contemporary man confronts a dilemma. In search of his or her own identity and a model of life in human community, an individual can choose between two attitudes which exclude each other. The first one is shaped by the Catholic Social Teaching and is based on a foundation of Christian anthropology. It leads to self-identification within the framework of a double model of the human being: man and woman. Consequently, someone identified with his or her biological sex tends toward self-fulfillment in the traditional social and cultural role. The second attitude is based on the postmodern deconstruction of the category of sex. It leads to a blurred vision of one's own sexual identity, denial of opposition and complementarity of man and woman and rejection of traditional criteria of choosing one's way of life. This paper presents the arguments of these two attitudes and the probable consequences of choices made within the framework of both options discussed.

Keywords: family, gender, Catholic social teaching, axiological competencies, deconstruction of reality

Introduction

In the contemporary world there is a dispute, the consequences of which may prove to be important for the future of our entire Western civilization. The axis of this dispute constitutes two notions related to each other: gender and family. Especially the first of these concepts is subjected to a sharp criticism by the supporters of a new type of concept, whose distinctive feature is the attempt to

replace the traditionally used and commonly understood term *sex* with the other, specially adapted for an effective dissemination of new ideas, and borrowed from the language of science, that is, the term ‘gender’.¹

The extent and significance of this dispute is much broader than it could be, due to the superficial analysis of individual texts, which appear on the publishing market and in media within the context of constantly ongoing dispute. It is something more than the discrepancies in terminology, it is more than discussions on the traditional model of the family and its social functions, and it is more than a continuation of emancipatory movements that are increasingly demanding new forms of equality of sexes. It is impossible to separate this issue, due to which a fight with words and insinuations, arguments and emotions takes place, from a global vision of the world, human being, and society, and that which is associated with that vision, namely, a strategy of understanding or designing the purpose and meaning of specific people’s own, individual existence, to whom public speeches of people involved in the dispute are addressed.

It is important for us to understand how different these two, constantly confronted with each other, though not directly, models of reality are. The size of this difference entails the radicalism of demands addressed to us all by those who do not accept the present status quo and expect far-reaching changes, and even try to make such changes by themselves or initiate them with their statements and activities. The changes proposed (and in part also provoked) by a party active to the dispute are to be made primarily in the areas of language, which we use to talk about sex and family matters. It does not mean that controversies are purely verbal. Specialists in the study of social reality long time ago have abandoned the assumption that words are just forms of subjective references made by individual language users as regards the unchanging, objectively existing reality of things, facts, and processes. The vast majority of scholars in the social and cultural studies today represent the constructionist standpoint, according to which our expressions (language constructs) do not reflect a pre-existing reality, knowable regardless of language competence, but themselves create social reality, or at least give it a new, previously non-existent meaning.²

¹ See *Oxford Advanced Learner’s Dictionary of Current English, 6th Edition, 2000*: Under the entry *Gender* indeed on the very first position, the explanation is provided: “The fact of being male or female”; but points 2 and 3 refer to—the chronologically earlier—grammatical meaning: “(in some languages) each of the classes (masculine, feminine, and sometimes neutral) into which nouns, pronouns, and adjectives are divided. Different genders have different endings, etc. [or] (in some languages) the division of nouns, pronouns, and adjectives into different genders.” This was also pointed out by Karolina Krasuska: “the Anglo-Saxon term *gender*—before designating the grammatical gender—was derived from the American sexology” (term *Gender* in: *Gender Encyclopedia. Gender in Culture*. Warszawa 2014).

² See Ian Hacking, *The Social Construction of What?* (Cambridge: Harvard University Press, 1999); Kenneth Gergen, *An Invitation to Social Construction* (Los Angeles: Sage, 2009).

Anyone who accepts the theoretical assumptions of constructivism, must also accept, as a consequence, that change in the way of talking about any object alters the object or gives it a new meaning which is different from the previous one. Some members of the so-called third-wave feminism are guided by such hope in regard to the area of human sexuality. Much attention to the role of language in creating and transforming reality was devoted for example by Judith Butler in her books *Excitable Speech: A Politics of the Performative* (1997) and *Undoing Gender* (2004). Therein the author expresses the “belief that reality can be reduced to the rank of a text. The language becomes the place and the means of constructing reality. By constant appearance of new narratives referring to the idea of *gender fables*, it is possible to be triggered from any cultural determinants. In the new, tolerant world where neither at the level of moral, nor legal issues, there shall be no differences between the whole range of sexual identities and behaviors resulting from them, sex becomes liquid and possible to be changed by the individual just by ‘overwriting’ a new narrative on the existing one. A change in language (*linguistic turn*) will lead gradually to a change in moral norms (*ethical turn*), and finally to adapting the law to the newly constructed reality and creating new institutions.”³

The list of demands of gender supporters does not end on the calls for the implementation and dissemination of the new language, and, as a result, a change of reality and new meanings to things, events, and actions. They also want the change in language to change the thinking of modern people. This should be done in such a way for the transformed thinking to motivate people to take other decisions and self-creational activity than previously, in order to implement a radically new design of humanity. On the one hand, it would be based on the results of the ongoing scientific studies that constantly bring new discoveries, changing approach to biological, psychological, social and cultural sex, and formation processes of individual, one’s sexual identity, whereas on the other—on the universal acceptance of the individual’s right to happiness, well-being, and satisfaction with one’s own life, and the right must include first and foremost the freedom to choose gender roles and ways of satisfying sexual needs.

Marguerite A. Peeters, referring to his research, conducted since 1994, says that one of the key elements of the strategy of dissemination of the way of thinking derived from the feminist movements and continued under the label of “gender,” was to change the official language of international standards, arrangements, and papers, mainly those published under the aegis of the United Nations. The researcher writes: “Soon after the fall of the Berlin Wall in 1989 UN began the construction of a new global agreement on the norms, values,

³ Marian Machinek, “Płaszczyzny konfrontacji antropologii teologicznej z ideą gender,” in *“Mężczyzną i niewiastą stworzył ich.” Afirmacja osoby ludzkiej odpowiedzią nauk teologicznych na ideologiczną uzurpację genderyzmu*, ed. Andrzej Pastwa (Katowice: Księgarnia św. Jacka, 2012), 16–17.

and priorities of the international cooperation at the beginning of a new era, called globalization. The construction of this consensus has taken place mainly through a series of nine major international conferences [...]. During these meetings, a number of ‘new paradigms’ expressed in a new language were adopted. Gender is one of them. The term ‘gender’ came into the language of the documents prepared by UN Member States in the early 90s under the influence of feminists [...]. UN Conferences, held after the Cold War, became the scene of a series of silent revolutions, taking place through language and consensus [...]. Looking at the language of the legal instruments adopted before 1990, the use of the term ‘gender’ and expressions therefrom derived it [...] is not only new, but also a turning point in intergovernmental speeches. Human rights treaties relate essentially to men and women, spouses, parents, mothers or husbands and wives, when raising the equality of all human beings (in dignity and in the face of the law) or issues regarding family, marriage, and education of children. They use the word *sex* when addressing the problem of non-discrimination. The International Bill of Rights also recognizes the family (in the singular—not ‘families’) for the natural and fundamental basis of society, having a right to be protected by society and the state, based on a marriage between a man and a woman, contained only by full and free consent of the spouses, clearly understood in the context of these documents as a husband and a wife, a man and a woman. It confirms the inner dignity—internal, that is, belonging to their own nature—of all members of the human family. [...] The function of the language is to call these realities as they are. Human rights treaties are still, to a certain point, to honor this function. The function of the law is not really the creation of reality and truth, but identifying what is right. If it is not, the law and universality would be an arbitrary dictate. Since the gender revolution is a process of deconstruction of universal realities, [...] it is not surprising that the language calling these realities tends to disappear [...]. A new semantic package has appeared, in which [the term] ‘gender’ is only one of the elements. [Others are] health and sexual and reproductive rights (rather than procreation), the family in all its forms or different forms of family (deliberately vague to cover ‘all possible options’), instead of [just] family, safe abortion, freedom of choice, stereotypes (instead of complementarity), equal partners (rather than spouses), pregnancies called ‘forced’, only to name a few examples. Since the UN conference in Beijing (1995), the language characteristic of gender spread quickly in politics at the international, supranational, national, and local level.⁷⁴

Appeals and demands aimed at this kind of transformation of thinking currently get to quite a fertile social ground. For some time now, social and cultural studies have formulated diagnoses, which show that people living today are

⁴ Marguerite A. Peeters, *Le gender: une norme politique et culturelle mondiale? Outil de discernement* (Edition Mame, 2013), 85–86, 92–94.

probably one of the last generations living in a spiritual environment, formed by centuries of development of the Mediterranean civilization. The breakthrough (at least in the sense of subjective experience) role of the current, almost simultaneously marking the beginning of the third millennium, social and civilizational crisis, is described, among others, by Krzysztof Wielecki: “The present times could say be easily referred to as a state of a deep post-industrial crisis, which is the result of major civilizational changes, especially technological ones, but also some intellectual looping of people, a kind of an evolution of intellectual currents, the collective imagination, value systems, etc. [...] We live in a time of crisis of civilization, which makes us experience a dramatic and historic rupture of two eras: the already passing industrialism and the new, which we cannot yet name, and that is born before our eyes. [...] Differentiating factor is the crisis of the social order, violating the stability of social structures, major social institutions, from the state to the family, culture, economy, etc. It deepens the suffering, the lack of confidence, a crisis of identity, confusion, anxiety, despair, and narcissism of a modern man.”⁵

This and similar diagnoses do not to a large extent mention the mental aspects of culture that are directly related to the development of science and technology and their practical applications, but most of all they mention the axiological environment, shaping the preferential thinking styles, the competence in knowledge and recognition of values—above all, moral ones, though not only—and the attitude towards the standards and obligations arising from the current shape of the social order. The aforementioned axiological environment consists of a set—for many centuries relatively stable—space of values that are reflected in works of art, philosophical treatises, legal and political systems and traditions and customs deeply penetrating daily lives of people. Meanwhile, today we observe “a strong trend in the social sphere of detaching the personal and social life from ethical standards. This tendency in a certain sense was also formerly elaborated. Nietzsche, among others, pointed it out in his essay, entitled *Jenseits von Gut und Böse*. Today, however, it is characterized by particular dynamics. Axiology itself is treated as a specific restriction of freedom, both the individual and social one. Exemplification of this fact can be a problem of lawmaking in multiple social beings. Basing legal standards on ethical principles is regarded as a specific form of the bondage of law. Therefore, the existence of an ethical order, which in the field of lawmaking would make the standards of conduct, is firmly rejected.”⁶

⁵ Krzysztof Wielecki, “Kryzys postindustrialny, osobowość i zdrowie psychiczne,” in *“Inny” człowiek w “innym” społeczeństwie? Europejskie dyskursy*, ed. Piotr Mazurkiewicz and Krzysztof Wielecki (Warszawa: Centrum Europejskie Uniwersytetu Warszawskiego, 2008), 127.

⁶ Henryk Skorowski, “Aksjologiczne dylematy współczesności,” in *Kryzys postindustrialny interpretacje, prognozy. Perspektywa europejska*, ed. Piotr Mazurkiewicz and Krzysztof Wielecki (Warszawa: Centrum Europejskie Uniwersytetu Warszawskiego, 2007), 87–88.

In today's society there is also a comparatively low level of axiological and normative competence. This is due to the fact that the values that we believe in and strive every day to embody, and also those that lie at the root of standards of conduct, as well as the practical arrangements, convictions, and worldviews are rarely subjected to reflection and critical discussion. We do not think about them every day, we do not talk about them and, consequently, we are little aware of the fact how much our opinions, evaluations, choices, and decisions depend on the structure and order of individual axiological maps, stored and operating partly below the threshold of consciousness.

At the same time, it escapes our attention that, at any moment, through many news channels which are used by modern society, a stream of messages comes to us, containing—apart from literally expressed content—a rich and an important axiological component. Little are we aware of the fact that at all levels of communication—from the intimate to the mass one—we pass not only the pure information, but also a number of elements that affect our perception of the sphere of values. However, this occurs on the margins of our observation field or completely outside its boundaries. When we consciously analyze the content of the received messages, only in exceptional cases, we draw attention to exploring, discovering or creating values taking place through them. In practice, these are the axiological components of contents assimilated by us, which more durably and effectively than the information content affect our attitudes, shape our own priorities of evaluation and preferences, and indirectly are able to greatly help to change the existing beliefs. It is a natural and necessary process, since every day, while living and experiencing the richness of the external and internal contents filling our lives, we concentrate not so much on an intellectual reflection (except for very few cases), but on what makes our life happy and fulfilled, or on the contrary—pitiful and miserable. A French philosopher Emmanuel Lévinas noticed: “We live from ‘good soup’, air, light, spectacles, work, ideas, sleep, etc. These are not objects of representations. We live from them. [...] They are always in a certain measure—and even the hammers, needles, and machines are—objects of enjoyment, presenting themselves to ‘taste’ [...]. These contents are lived: they feed life.”⁷ These extremely insightful and accurate observations by Lévinas concern not only our communication with material things, but also—as he noted—with ideas. Our attitude to ideas, thoughts and opinions, which we feed ourselves with or which we meet by participating in discussions and by assimilating the content of the publications or media broadcasts, does not rely on purely rational assimilation and exclusively rational analysis, but—as Lévinas wrote—we live from them, we experience their contents and their way of public presentation, we delight in them or we feel repugnant, sometimes fearful, un-

⁷ Emanuel Lévinas, *Totality and Infinity. An Essay on Exteriority*, trans. Alphonso Lingis (Pittsburgh, PA: Duquesne University, 2011), 110–11.

certain, or anxious. We react lively to these components of stimuli coming to us from the outside world which—often bypassing the sphere of the rational—are moving sensitive chords of our feelings, emotions, moods, referring to what (as claimed by Roman Ingarden) “we know, not knowing” about values.⁸ Each of these countless elements with which we meet in everyday existence, appears in the field of our attention always in some axiological aura. We feel it much more deeply, more subtly and variously than it seems to result from the poverty of words and language communication devoted to this area of human experience. In relation to the values, the greater part of our life is set in the non-verbal space, in the realm of that which is unspeakable—which does not mean that it is void and unstable. For, generally, we do not make an introspection and self-reflection from this angle, which is why we are often vulnerable and exposed to loot of “the pedlars of ideas,” various manipulators who—sometimes honestly and in good faith, but sometimes cynically and hypocritically—recruit, among us, the followers of all sorts of ideas. Realizing this fact should make us approach, much more cautiously, the attempts to influence our way of living and feeling the world, made, for example, under the pretext of acquainting us with the latest achievements of human thought in this or any other field. Gender studies may be, let us say, one of these fields.

The thing that makes it difficult, and sometimes quite impossible to reliably assess the information, ideas, opinions and assessments coming to us, is also—due to a sharp and too fast, for our capacity for cultural adaptation, development of techniques of transmission and dissemination of information—a chaos and an information glut, which we live in every day with no possibility of escape. One of the paradoxical effects of constant overloading with knowledge is a growing sense of detachment from the reality. Due to the permanent impact of ubiquitous multimedia communication, a contemporary man almost completely lost the feeling of living in a single, real, and concrete reality, arranged according to regular laws, successively learned through science. Residents of civilized parts of the world are constantly immersed in the multiplicity of parallel or intersecting narratives on what it is that surrounds us. This creates the false impression that we live not in one but in many worlds at the same time. This is because it is increasingly more difficult to find a common denominator referring the recipients of certain narratives to still the same, original, pre-theoretical, co-presupposed world (formerly known as real or actual). Particular systems of description of the reality surrounding us, co-present in the public communication, are in fact equipped with their own, separate catalogues of assumptions, both expressed directly in the form of axioms or postulates, as well—which in practice is not less important—camouflaged in the form of presuppositions

⁸ Cf. Roman Ingarden, “Czego nie wiemy o wartościach,” in *Przeżycie—dzieło—wartość* (Kraków: Wydawnictwo Literackie, 1966), 83–127.

(such as research shows, for example, by Elisabeth Loftus (see Loftus 1974)), recipients of the messages are easier to assimilate and more likely to believe in the content of presuppositions unexpressed directly, than in the literal content of verbalized statements). These lists of assumptions are so divergent that there is no possibility of synthesizing from them a single coherent image, which could reveal or point to the objectively, originally existing real being. Therefore, more and more popular are concepts of the kind that was announced by Jean Baudrillard, exposing a bold thesis already on the front cover: “Le réel n'existe plus” (Reality does not exist).⁹

The problem arises, how to live in a deconstructed reality, which cannot be defined or separated from fiction.¹⁰ The solution—although it is needed for one to be able to do anything with his or her life—is by no means easy. Especially that there is a lack of clear guidance and clear indications what strategy of proceedings should be taken in this situation. So we are stuck with our own cleverness and forced to seek individual projects of orientation in an inconsistent and unstable universe of the narrative. What solution we choose, will have a major impact on our decisions, including those which are of key importance for our whole future life.

One of the most important areas in which we make significant choices and make key decisions, is planning and starting a family or living alone or in loose, unstable relationship with one or more female or male partners. Every individual at some point of his or her life is faced with the need of taking one of those decisions. To develop decidedly this dimension of existence, which involves the selection of a model of an every-day intimate bond with others, a modern man has at his or her disposal everything that constitutes the content of worldviews tenders present in the public discourse. And this discourse, as we indicated at the beginning, is now dominated by an ongoing, for several years, dispute between supporters of the two main options. The first option, commonly referred to as conservative, groups around the standpoint of the Catholic Church and—in principle matters differing little from it—statements made by representatives of other Christian denominations. The second, of which preachers and propagators

⁹ Jean Baudrillard, *Simulacres et simulation* (Paris: Éditions Galilée, 1981).

¹⁰ The Fathers of the Second Vatican Council realized the growing difficulties in the correct orientation in an increasingly complex world, so they posted the following passage in the Dogmatic Constitution *Gaudium et spes*: “True, there is a growing exchange of ideas, but the very words by which key concepts are expressed take on quite different meanings in diverse ideological systems. Finally, man painstakingly searches for a better world, without a corresponding spiritual advancement. Influenced by such a variety of complexities, many of our contemporaries are kept from accurately identifying permanent values and adjusting them properly to fresh discoveries. As a result, buffeted between hope and anxiety and pressing one another with questions about the present course of events, they are burdened down with uneasiness. The same course of events leads men to look for answers; indeed, it forces them to do so” (*Gaudium et spes*, Introductory Statement, pt. 4).

define their views as progressive or revolutionary, is a set of convictions and ideas centered on the category of gender.

It is worth reiterating that the criteria that now guide people seeking the self-determination and wanting to define or create their own identity (including sexual), more rarely refer to the hope of discovering objective truth, the knowledge of which will clearly allow the cognition of the structure of the issue, about which we think, on the basis of which to design an adequate project of practical recommendations derived from the contents of acquired knowledge. Instead, the modern man is looking for subjectively credible and convincing story that will allow him or her to make a self-identification within the selected model for understanding of a human being and his or her life's vocation, which would rely on the pursuit of such a set of values that awakens in him or her the biggest, the most noticeable spiritual resonance.

In the following part, I want to concentrate on two aspects of the situation. One of them will be an attempt to reconstruct and concisely present the main objectives and theses of both proposals of understanding the role of the family in human life, including the consideration of the axiological dimension of each node. The second—reflection on the consequences of the fact of bringing us, the people now living, to such a choice.

The Man and the Family in Light of Catholic Social Teaching

The Catholic (and also more broadly Christian) family teaching is founded on the basic assumptions of Christian anthropology. An indelible and unmistakable starting point is the belief of the existence of eternal, constant, invariant human nature. Polish bishops in a letter to the followers point out that “this Christian vision is not some arbitrarily imposed norm, but flows from the reading of the nature of the human person, the nature of marriage and the family.”¹¹

Key elements of the Catholic teaching on man, being a basis for thinking about being consistent with the Will of God, vocation of marriage and family, can be found in numerous documents of the Church, including, among others, in the post-conciliar Pastoral Constitution on the Church in the Modern World *Gaudium et spes*. In Chapter I of the first part of this document (“The Church

¹¹ List pasterski Episkopatu Polski na Niedzielę Świętej Rodziny 2013 r., accessed June 1, 2015, http://episkopat.pl/dokumenty/5545.1,List_pasterski_na_Niedziele_Swietej_Rodziny_2013_roku.html.

and Man's Calling"), titled "The Dignity of the Human Person," in paragraph 12, we read: "Sacred Scripture teaches that man was created 'to the image of God,'" is capable of knowing and loving his Creator, and was appointed by Him as master of all earthly creatures (1) that he might subdue them and use them to God's glory [*Gaudium et spes*, Chapter 1, paragraph. 12], and in paragraph 14: "Though made of body and soul, man is one. Through his bodily composition he gathers to himself the elements of the material world; thus they reach their crown through him." The second part of the "Pastoral Constitution," titled "Some Problems of Special Urgency," begins with a chapter titled "Fostering the Nobility of Marriage and the Family." There are, among others, the following statements: [paragraph 52] "The family is a kind of school of deeper humanity. [...] the family, in which the various generations come together and help one another, grow wiser and harmonize personal rights with the other requirements of social life, is the foundation of society. All those, therefore, who exercise influence over communities and social groups should work efficiently for the welfare of marriage and the family. [...] Christians, redeeming the present time and distinguishing eternal realities from their changing expressions, should actively promote the values of marriage and the family, both by the examples of their own lives and by cooperation with other men of good will. Thus, when difficulties arise, Christians will provide, on behalf of family life, those necessities and helps which are suitably modern."

According to the Christian doctrine, a man was created at the dawn of history in God's image, after His likeness. The Creator has endowed him with reason, free will, and other qualities that make up the essence of humanity. One of the elements of unchanging human nature is sex. According to the teaching of the Church, God's plan for humanity was to create it male and female (Gn 1:27). Separation of the sexes is a gift that allows human beings to be fertile and to fulfill a divine commandment expressed in words: "Be fruitful, and multiply, and replenish the earth, and subdue it" (Gn 1:28).

The sex of a man is also a source of vocation to family life. Characteristics of a good, happy, and functional family come from specific traits of human nature. From the evidence indicated in the study of theology of the family, it follows that its basic features are monogamy, durability, and indissolubility, while the spouses creating it, treat each other with love, fidelity, and responsibility for each other and for the offspring born in their relationship. Marriage and family are not merely human reality, since by entering into the marriage, the husband and wife use the sacramental grace.

Jerzy Bajda formulates the main theses of the teaching of the Catholic Church on the place of the family in human and society life as follows: "The family is a human reality in the strictest sense of the word. The subject of the family is the human being, as a person and as a community, as an individual and as a family society. The subject matter of the family, on the other hand, its

drama, the content of its history, is an authentic human life, the deepest interpersonal relationships, as well as the deepest and most fundamental reference to relevant events and issues of human existence. It is the human reality, already in a genetic sense, since the man originated from the family (both as an individual and as the humanity), already in a formal sense, because only the fullness of family relationships shows the correct shape of human life; already in the final and normative sense, for all human activity in the world receives a real human value only by its relation to the family.¹²

The Church emphasizes the profound connection between the reality of the marriage and the family and the supernatural bond that connects God and a human being, which is realized most fully in the relationship of Christ with the earthly community of the Church. The International Theological Commission, established in 1978 at the Gregorian University in Rome, states: “In the New Testament, a Christian marriage received a higher dignity, namely, it reveals the mystery that takes place between Jesus Christ and the Church. The theological interpretation highlights this analogy more deeply: the highest love and devotion to the Lord through His blood and faithful and irrevocable adherence to the Church-bride is a benchmark and an example for Christian marriage.”¹³ Polish theologian Jerzy Laskowski comments on this provision as follows: “The text of the Letter of St. Paul to Ephesians reveals the qualities of Christian marriage. These are: selfless love, unity, fidelity, indissolubility, and sacramental power, which make the Christian marriage enlivened with faith and personal love, and become a sign of unity between Jesus Christ and the Church.”¹⁴ The same author points out the important role of the documents of the Second Vatican Council in the clarification of the Catholic doctrine on the family. He writes, among other things: “Teaching of the contemporary Church on marriage and family was described by the Second Vatican Council in the Pastoral Constitution on the Church in the Modern World [...]. Marital love is shown in this document in the personalistic dimension. It is emphatically underscored that love requires the involvement of the whole person: the mind, the will, and the feelings, and demands the opening to the entire personality of a spouse: to his spirit and body, emotional, intellectual, and spiritual life. [...] The model of the Catholic marriage cannot give up such qualities as: exclusion, indissolubility, fertility, and the sacramental nature.”¹⁵ The quoted author draws attention to the important property of the Catholic family model, namely its flexibility, which allows adaptation

¹² Jerzy Bajda, “Powołanie małżeństwa i rodziny. Próba syntezy teologiczno-moralnej,” in *Teologia małżeństwa i rodziny*, vol. 1, ed. Kazimierz Majdański et al. (Warszawa: Wydawnictwo Akademii Teologii Katolickiej, 1980), 7.

¹³ Jerzy Laskowski, *Małżeństwo i rodzina w świetle nauki Soboru Watykańskiego II*, 2nd ed., expanded (Warszawa: Instytut Wydawniczy PAX, 1982), 280.

¹⁴ *Ibid.*, 280–81.

¹⁵ *Ibid.*, 281–82.

to changing circumstances and cultural backgrounds while remaining within the same essential features and requirements resulting from them: “The Model of the Catholic marriage can take many forms. There are no major obstacles for it to be surfaced in the form of partnership marriage.”¹⁶ “The modern model of the Catholic marriage should correspond to the current development of the society, should be rooted in the sources of Revelation and resonate with the latest teaching of the Church. The most adapted to current conditions of social life seems to be a model of marriage as a partnership, in which both—husband and wife—jointly decide on matters of the family, and the emotional and psychological bond plays a greater role in mutual contacts of material-property relationships. This model [...] has a relatively high structural flexibility, allowing the adjustment of marriage patterns to the changing external conditions.”¹⁷

The Catholic bishops have spoken out on two successive general synods, devoted to family issues, on the subject of specific conclusions, resulting in theology and Christian anthropology in order to deepen reflections on marriage and the family. The first one was held from 26th September to 25th October, 1980, in Rome, at the beginning of the pontificate of John Paul II, the other was summoned by Pope Francis and debated from 5th to 19th October, 2014. In the final documents, drafted after the Synod of 1980, one can find, among others, the following statements: “III. God’s Plan for Marriage and the Family. [...] In a special way the family is called to carry out this divine plan. It is, as it were, the first cell of the church, helping its members to become agents of the history of salvation and living signs of God’s loving plan for the world. God created us in his own image (cf. Gn 1:26), and he gave us the mission to increase and multiply, to fill the earth and subdue it (cf. Gn 1:28). To carry out this plan man and woman are joined in an intimate union of love for the service of life. God calls spouses to participate in his creative power by handing on the gift of life. [...] IV. The Family’s Response to God’s Plan. Just as we are doing, you also are seeking to learn what your duties are in today’s world. In looking at the world, we see facing you certain important tasks of education. You have the tasks of forming free persons with a keen moral sense and a discerning conscience, together with a perception of their duty to work for the betterment of the human condition and the sanctification of the world. Another task for the family is to form persons in love and also to practice love in all its relationships, so that it does not live closed in on itself but remains open to the community, moved by a sense of justice and concern for others, as well as by a consciousness of its responsibility toward the whole of society. It is your duty to form persons in the faith—that is, in knowledge and love of God and eagerness to do his will in all things. It is also your task to hand on sound human and Christian values and to

¹⁶ Ibid., 283.

¹⁷ Ibid., 279.

form persons in such a way that they can integrate new values into their lives. The more Christian the family becomes, the more human it becomes.”¹⁸

Inspired by the results of the meeting of the Synod of Bishops, on December 15, 1981, Pope John Paul II proclaimed Apostolic Exhortation *Familiaris Consortio*. On the Role of the Christian Family in the Modern World, in which he wrote: “[...] 18. The family, which is founded and given life by love, is a community of persons: of husband and wife, of parents and children, of relatives. Its first task is to live with fidelity the reality of communion in a constant effort to develop an authentic community of persons. The inner principle of that task, its permanent power and its final goal is love: without love the family is not a community of persons and, in the same way, without love the family cannot live, grow, and perfect itself as a community of persons. [...] 21. All members of the family, each according to his or her own gift, have the grace and responsibility of building, day by day, the communion of persons, making the family ‘a school of deeper humanity’: this happens where there is care and love for the little ones, the sick, the aged; where there is mutual service every day; when there is a sharing of goods, of joys, and of sorrows.”

Short information about the most important agreements of last year’s Synod of Bishops in Rome was announced by Polish Bishops in the Pastoral Letter of the Episcopate of Poland for the Sunday of the Holy Family, on 28th December, 2014, saying: “Owing to Divine Providence we witnessed the third Special Synod of Bishops between 5th and 19th of October, during which Synod Fathers, unified with the Holy Father, reminded that the Gospel of the Family is a part of the fundamental Church’s message. Its continuous teaching reminds that family is a place of being acquainted with faith, sharing each other and building long-lasting relations. Family, which begins with holy matrimony, is still the biggest life’s desire for many young people. God craves for human’s happiness and this is why He wants married couples to accept and give themselves to each other, so the new life, the fruit of their love, would be born in the friendliest environment.”

I have cited several statements of both Catholic hierarchs and theologians to show that the standpoint represented by them concerning genesis, personal and social functions, and the most desirable and suggested family traits is characterized by clarity and coherence. The structure of Catholic teaching about family is simple and clear. Its foundations are embedded in the Holy Bible, which is influenced by precisely agreed and standardized interpretation as part of *Magisterium Ecclesiae*. Subsequently on the line of reasoning, which uses methodological principles suitable with theological studies, philosophy, and Catholic

¹⁸ Synod of Bishops: A Message to Christian Families in the Modern World—statement issued by the Synod Fathers to the global Catholic community on 24 October 1980. *Origins: NC Documentary Service* 10, no. 21 (November 6, 1980): 323–24.

social studies, at first, descriptive theses are formulated, describing family as a special kind of community called upon to realize accurately indicated goals and functions, and then—normative postulates are defined. Their task is to present fundamental duties of a human, who accepts guidelines of the Catholic doctrine and on their basis wants to shape his or her personal and family life. An additional element of the Catholic teaching about family is a reflection upon social, educational, and civilizational family functions, particularly making an effort to answer whether observed in contemporary world family model changes and spreading of other than Christian beliefs and aspirations connected with family's role in human and communities lives, has a positive or negative effect on one's moral condition and the quality and durability of relations creating human co-existence.

Human Being and Family in the Light of Gender Concept

The task to point out the most important anthropological assumptions creating the model of life that realizes *gender theory* indications is much harder than in the case of the Christian family concept. It is because the latter one deals with consistent, step by step creation of transparent system of mutual references between the essential components of the human nature exposed and formulated by philosophers, as well as conclusions drawn from them, which enable to shape the reality of family and marriage life in a certain way. Within *gender discourse* such transparency does not appear. One cannot say about a single, shared by all trends and authors, theoretical foundation that would be explicitly and easily identified as theological and philosophical underpinnings of the Catholic teaching about family.

One could try to indicate a few causes of this fact. One of them is that no international institution has been established, nor any environment that would be strong, solidary, and equipped with decisive and strong identity, which could play a part in integration of a multitude of followers with specific type of outlook focusing around the idea of gender redefinition. The way the situation shapes itself shows that in different countries and spheres of interest, scientific research and philosophical contemplation are conducted, political programs and ideological manifests are being created, which in large part are independent from each other, yet remain connected by general attitude towards reality—both biological and cultural, as well as a tendency to express one's opinion in a distinctive style and language, which is incidentally accompanied by (it has to be acknowledged

as necessary condition for affiliation into *gender discourses* group) specified metalanguage position, closely connected with sociological constructivism (it will be discussed later in the text). Then, we can only speak about certain family of intellectually related stances or informal movement associating followers of outlook that undermines traditional definition of gender and conservative vision of family life. However, this movement is not uniform, or theoretically coherent; moreover, it lacks internal solidarity. On the contrary, particular factions and orientations often remain in a severe conflict. Among others, Bell Hooks highlights this (writing admittedly about feminism, however, the same observations can be related to wider and even more internally incoherent gender movement): “People who write about contemporary feminism movement make it look like there is some solid base for feminists rules and beliefs, which made the foundation for this movement from the very beginning. Yet when feminism broke out for good in the 1960s, it appeared in different environments among women who often did not realize that there are other similar groups. Not even one precisely settled platform of this movement existed. [...] at the beginning, feminist theory was a space of critical analysis and image alteration about sexist system of gender roles. It was to ensure revolutionary project, which, if realized, would lead to change in patriarchal culture. [However,] feminists often conversed about the necessity of mass feminist movement creation, as no joint base that would enable its establishment existed. [...] Similarly to our life which is not invariable or static, so our theory must remain fluid, open, and react to new information.”¹⁹ [...] “During much of the writing of *Ain’t I a Woman: Black Women and Feminism* I worked in isolation. It was my hope that the publication of this work would draw me closer to feminist activists, especially black women. Ironically, some of the most outspoken black women active in feminist movement responded by trashing both it and me. While I expected serious rigorous evaluation of my work I was totally unprepared for the hostility and contempt shown to me by women whom I did not and do not see as enemies. [...] It does mean we have a basis for communication, that our political commitments should lead us to talk and struggle together. Unfortunately, it is often easier to ignore, dismiss, reject, and even hurt one another rather than engage in constructive confrontation.”²⁰

The term ‘gender,’ edited by Karolina Krasuska in *Gender Encyclopedia*, starts with a definition of the term as a “category that refers to cultural and social character of norms of gender and its relations.”²¹ Henceforth, however,

¹⁹ Bell Hooks [Gloria Jean Watkins], Preface to *Teoria feministyczna. Od marginesu do centrum*, 2nd ed. (Warszawa: Wydawnictwo Krytyki Politycznej, 2013), 19, 21, 23.

²⁰ Bell Hooks [Gloria Jean Watkins], Acknowledgments to *Feminist Theory. From Margin to Center* (Cambridge—Boston, MA: South End Press, 1984), vii.

²¹ Karolina Krasuska, “Gender,” in *Encyklopedia gender: płeć w kulturze*, ed. Monika Rudaś-Grodzka et al. (Warszawa: Wydawnictwo Czarna Owca, 2014), 155.

she writes (quite imprecisely) about “diffusion of ‘gender’ in the 1960s”²² about a “strategy” in which the “introduction of cultural category [gender] was to question biological determinism,”²³ whereas in the further part of her clarification, she uses “gender theory” term (in plural).²⁴

The second reason for the heterogeneity and ideological “fluency” of intellectual formations connected with the concept of gender (although it is a motive that critics, rather than followers and propagators, invoke), refers to the rule that identifies *gender discourses* as a part of wide postmodern concepts of the family. This thread is brought up and elaborated among others by Marguerite A. Peeters who writes: “Gender is a postmodern concept and postmodernism is a complex cultural phenomenon still not relatively well researched and poorly recognizable. [...] Considering its connection with the postmodern, gender is in principle ‘anti-theoretical.’ Talking about ‘gender theory’ is something paradoxical. Opposing to ideologies that existed in the past, it is impossible to define gender as a whole, to make a clear opinion, and define it [...]. Gender and its derivatives unceasingly slip this way from one interpretative choice to another, at the discretion of changing sociological trends and ideological positions. They are processes of changes, fluid, dynamic, prolific with new words, translations, interpretations, and ideological propositions. They invent themselves anew as new meanings are attributed to them.”²⁵ Archbishop Henryk Hoser, ordinary of the Warsaw-Prague Diocese, sees this problem in a similar way: “Gender is a word appearing in a language [...] from a certain point in time in different contexts, but its meaning remains little-known and is never precisely defined. Observers and participants of social life encounter new trends and phenomena, proposals of new laws and practices in fields, which seemed to be lucid and obvious. Such laws and practices are gender affiliation, relations between men and women, definition of the family, parental rights, participation of women and men in social, working, and political life. Not without surprise they discover demands and aspirations to redefine everything that makes the foundation of human existence in its constituent conditions. [...] Literature on the subject is not homogeneous, for it is spread and fragmentary. Aside from scientific studies, dissertations, and monographs of varied significance, mass media articles and popular mass media broadcasts are the prevailing ones. However, they lack precision, critical apparatus, historical continuity, and perspective acumen; conversely, they do not lack demagoguery.”²⁶

²² Ibid.

²³ Ibid., 156.

²⁴ Ibid., 156–58.

²⁵ Marguerite A. Peeters, *The Gender Revolution. A Global Agenda. A Tool for Discernment*. Preface by Cardinal Robert Sarah (Dialogue Dynamics asbl, 2013) 39, 41.

²⁶ Henryk Hoser, “Przedmowa do wydania polskiego,” in Marguerite A. Peeters, *Gender — światowa norma polityczna i kulturowa. Narzędzie rozeznania* (Warszawa: Wydawnictwo Sióstr Loretańek, 2013), 5–6.

It does not mean, however, that statements that refer to the concept of gender favorably can be randomly defined. Against all appearances, changeability and senses fluency within the limits of this discourse is limited. Permissible are only those interpretations, which can efficiently contribute to the realization of primary goal that beacons authors and alternative sexual human conception propagators. Marian Machinek made an attempt to define that goal more precisely. He writes: "Social and cultural claims of that concept reach even further. They pursue an aim, which is a total reconstruction of society and radically different from previous understanding of human, ethics, and social politics."²⁷ Gabriele Kuby adds: "The above-mentioned things are being done in the name of ideology, which denies that human exists as man and woman and that this difference influences human's identity and is a necessary condition to prolong the human race. [...] Never before was there an ideology that would crave to destroy gender identity of man and woman and all standardized ethical sexual relations. Now it has appeared: it is known as 'gender mainstreaming.'"²⁸

Identification of trends belonging to *gender discourses* family is in addition hindered by the fact that particular authors determine frames of this concept either narrowly or widely. Some claim that it is possible to speak reasonably about *gender studies* only as "interdisciplinary studies and research concerning gender issues, understood as dynamic, processual, and non-essential," providing an "analysis of all social and political practices, individual and collective behavior, texts, words, pictures, signs and symbols that are arranged into a system of meanings, which forms and reproduces gender differences, normative and non-normative identities" in the center of attention.²⁹ Every attempt of moving gender category outside the area of research and scientific discussions, placing it in the sphere of comments characterized by persuasion, propaganda or ideology, inevitably leads to misunderstandings and serious interpretative mistakes. Such standpoint is represented, for example, by the group of signatories of The Open Letter of Scientific Environment of Teachers that Deals with Gender Issues [in Poland]. The letter includes, among others, the following statements: "Gender, in distinction from sex, means social and cultural gender, namely, the meaning that is assigned to concepts of femininity and masculinity, the roles that are designated for their members in relation to what sex they are, and the ways these roles are evaluated. Social and cultural gender appears in every society; however, how it is filled with content depends on culture, and changes both over time along with the society's development. Ideologization of the concept of gender by, among others, ascribing subject areas to it, which are not a part of

²⁷ Machinek, *Plaszczyzny konfrontacji*, 15.

²⁸ Gabriele Kuby, *Globalna rewolucja seksualna. Likwidacja wolności w imię wolności* (Warszawa: Wydawnictwo Homo Dei, 2013), 18–19.

²⁹ Bożena Chołuj, *Gender Studies*, in *Encyklopedia gender: płęć w kulturze*, ed. Monika Rudaś-Grodzka et al. (Warszawa: Wydawnictwo Czarna Owca, 2014), 163.

it, that is, education, sexual preferences, transsexualism, and, above all, blaming about pornography, debauchery, and pedophilia is not only intellectual but also a moral overuse.”³⁰ Whereas according to other authors qualified as gender mainstreaming, practical consequences of scientific research create specificity of gender movement and lead to specific changes in the area of law, national institutions, customs and human beliefs, new self-realization projects, and new forms of sexual intercourse. For instance, a Polish scholar from the University of Warsaw, Magdalena Radkowska-Walkowicz speaks inwardly: “I must disagree with most people who comment in media and defend the term ‘gender’ and gender programs, that it is merely academic examination, category developed through social studies, so it should not be carried out outside of the academy. No, science is not neutral, it does not function in a social void. The emergence of such conviction that gender exists and sets our positions in society, not biology, has huge social and political consequences. It allows for the deconstruction of the traditional role of a woman, redefinition of various obligations and duties connected with sex. This is called political emancipation.”³¹

Being aware of provisional character and incompleteness of every possible interpretation, including the one we are currently looking into, we will have to try to point at several statements that recur so often that without any bigger risk could be acknowledged as foundations for the outlook that is dominated by the concept of gender. For this purpose one has to, or at least it is worth to, arbitrarily narrow the scope of our interests to the newest and the most radical gender strains, which “fit into the trend of so-called ‘strong’ postmodernism” as discussed by Machinek.³² Its supporters “understand the term of *gender* not only as indispensable cultural supplement of sex term, but also postulate resignation from the latter one, reducing only to the analysis of language determinants that shape gender identity in terms of specific culture.”³³ Typical postmodern feature of those solutions is ignoring what is real and introducing in the place of reality, arbitrarily constructed language product. Exponents of gender concept smoothly pass over the concept of nature lightly, refusing it any positive meaning and trying to convince everyone to the thesis that “the source of all normativeness is solely culture, not nature.”³⁴ In particular, “sexual (*gender*) identity is a cultural construct, independent on its biological basis,” and “what so far has been

³⁰ List Pastorski Episkopatu Polski na Niedzielę Świętej Rodziny 2014 r., accessed 1.06.2015, http://episkopat.pl/dokumenty/listy_pasterskie/6344.1,Glosic_z_radoscia_Ewangelie_o_rodzynie.html.

³¹ “Czemu służy straszenie ideologią gender?” Z Magdaleną Radkowską-Walkowicz rozmawia Tomasz Stawiszyński, in *Gender. Przewodnik Krytyki Politycznej* (Warszawa: Wydawnictwo Krytyki Politycznej, 2014), 346.

³² Machinek, *Plaszczyzny konforntacji*, 16.

³³ Ibid.

³⁴ Ibid.

considered as ontological category is in fact an ontological and epistemic strict discipline of world perception.”³⁵

Another peculiar characteristic of postmodern discourse is an immediate transition from description to prescription with ease.³⁶ Practical conclusions from constructivist gender concept hit at, as it is not hard to guess, traditional family model. If one's gender is not both, predetermined and determining the choice between those gender roles, which are possible to realize considering existing biological and cultural conditions, then circumstances that lead to the creation of the lasting family bonds with other people and in particular with partner in marriage, do not occur. If I assume that my sexuality is a dynamic and changeable process, acquiring different values at various times, then I cannot assume simultaneously that in the long term, I will be a good husband and father or a good wife and mother. Strictly speaking, a change in the continuum of gender roles does not completely exclude the possibility of self-fulfillment of human on a way of performing one of traditionally defined roles in family life. However, it makes such possibility problematic, difficult, and very unlikely. Furthermore, it gets unattractive, for maintaining lasting family bond requires huge effort and plenty of everyday sacrifices, and simultaneously, it takes away the possibility of making changes connected with any redefinitions of one's sexual identity, which in discourses that belong to the gender mainstreaming is often presented as a basic acquisition won by sexual emancipation revolutionary movements.

The last issue, which has to be pointed out, is discourses' field structure discussing the problems of old and new gender identity—namely, that which Maria Korusiewicz, a researcher of contemporary culture trends, refers to as a “cultural geometry.”³⁷ ‘Gender mainstreaming’ is a common term in the literature on the subject that clearly indicates multiple trends of descriptions, narrations, and publications. Since there is the mainstream, then its sub-trends must exist as well—and they really do. There is the central problem, yet there are also marginal ones. This observation is suggestive of the famous book by Bell Hooks, *Feminist Theory. From Margin to Center*. Admittedly, the author had in mind a different kind of spatial configuration;³⁸ however, there is nothing reprehensible

³⁵ Ibid., 17.

³⁶ See Jean-François Lyotard, *La condition postmoderne. Rapport sur le savoir* (Paris: Les Éditions de Minuit, 1979), 41–46.

³⁷ See Maria Korusiewicz, *Geometrie kultury wedlug René Girarda* (Katowice: Wydawnictwo Śląsk, 2015).

³⁸ Bell Hooks explains a quasi-spatial configuration project of hers, a socially reformative anti-establishment thought as follows: “To be in the margin is to be part of the whole, but outside the main body. As Black Americans living in a small Kentucky town, the railroad tracks were a daily reminder of our marginality. [...] Living as we did—on the edge—we developed a particular way of seeing reality. We looked both from the outside in and from the inside out. We focused our attention on the center as well as on the margin. We understood both. This mode of

in thinking about the entire class of gender discourses as of intellectual landscape, stretching from the center towards the margin. If so, an important issue remains to be determined: what is the center, and what the margin. When we are looking for the answer to this question, two opposing hypotheses collide, and they both seem to be equally substantiated. The first hypothesis, inspired by the idea of Michael Kimmel, for example, promulgates that in the center there are similar beliefs to the following one: “Gender is not simply a system of classification by which biological males and biological females are sorted, separated, and socialized into equivalent sex roles. Gender also expresses the universal inequality between women and men. When we speak about gender we also speak about hierarchy, power, and inequality, not simply difference. So the two tasks of any study of gender, it seems to me, are to explain both difference and inequality or, to be alliterative, difference and dominance.”³⁹ Therefore, in the center of thinking about gender, there stands a specific political project directed toward deep (many claim that plainly revolutionary) transformation of social and political reality in order to fully realize the postulate of gender roles equality and equality of rights between men and women, in its broadest sense, who are perceived in this discourse mainly as advocates and performers of those roles. Whereas a multiform and diverse string of interconnected nerve centers, both theoretical and practical, is extending around this central political project, thus, on the one hand, creating the front of scientific research concerning issues of sex and gender in their most important contexts and complications, from biology through neurosciences, ending up with social studies, political studies, law, and so forth, on the other—every form of practical, including ideological and propagandist, engagement in the creation of world movement of sexual emancipation. The second hypothesis will present the topography of “gender space” in a somewhat different manner. According to it, the center of this space consists of the brain effort of respectable scholars, in order to notice and read out anew, in the light of the newest accomplishments of science, facts, and processes, whose occurrence, and both social and cultural repercussions would remain unseen, if not for the arduous work of scholars. Such standpoint is represented for example by Maciej Gdula: “Gender studies in significant degree are creating knowledge with the use of scientific research procedures trying to find the answer for the question how the situation looks like. If we referred to our observations only, then we could for example think that women earn as much money as men or that they have as many children as they used to have in the past. However, if we gather appropriate numerical data and apply statistical calculations, we will see that women earn less and have fewer children than thirty years ago.

seeing reminded us of the existence of a whole universe, a main body made up of both margin and center (Hooks, preface to *Feminist Theory*, ix).

³⁹ Michael Kimmel, Introduction to *The Gendered Society*, in *Human Beings: An Engendered Species* (Oxford: Oxford University Press, 2012), 2.

The use of gender filter for analysis of many issues allows us often to discover a phenomenon, which we do not realize. [...] Although the death of the theory is promulgated, in principle, from several decades it does not hamper the development of old theories or creation of new ones. It is because we need more universal interpretations of reality. [...] Theories are not artificial systems deriving from arbitrarily established assumptions. They are rather an attempt of systematical answer to some basic questions." [...] Taking under consideration that contemporary science is defined by examination procedures, creation of theories and arguments, gender studies are just a part of it. Studies are created as a part of it and are subjected to judgment. Different theories are developed and subjected to criticism."⁴⁰ Around serious, responsible, critical, and fulfilling rigorous methodological criteria, gender group studies would later spread the margin, that is, various performances, marches, shouts, and other similar forms of marking the presence of gender issues in public space, next miscellaneous ways of popularizing main gender thoughts in mass media, publications, discussions, and finally forms of lobbying imposed by some local environments to put pressure on political class, both on a regional and global scale (for example by putting pressure on chosen UN agencies). Which of these hypotheses is closer to the truth? Honestly, on the basis of commonly available reference data we do not make a decision to indicate one solution to this problem. One can, at the most, arbitrarily follow personal sympathy or antipathy or some other undefined inner voice to support one or another resolution; however, cognitive value of such indication seems to be highly doubtful.

Additional difficulty in terms of particularization and identification of the scope of gender issues is that merely a thin and not always noticeable boundary (sometimes completely fading) divides gender trends from feminist and so-called post-feminist discourses. Some researchers, particularly those who are reconstructing the history of the problem, see in gender issues of a natural continuity of feminist movement and theories (see Krasuska 2014; Machinek 2012), whereas others claim that vital and irreducible differences occur between feminism and gender. For example, Michael Kimmel presents this matter in the following way: "[...] three decades of pioneering work by feminist scholars, both in traditional disciplines and in women's studies, have made us aware of the centrality of gender in shaping social life. [...] when we think of the word 'gender,' what gender comes to mind? It is not unusual to find, in courses on the history of gender, psychology of gender, or sociology of gender, that the classroom is populated almost entirely by women. [...] we continue to act as if gender applied only to women. Surely the time has come to make gender visible to men. As the Chinese proverb has it, the fish are the last to discover the

⁴⁰ Maciej Gdula, "Odpowiedź na pytanie, czy gender studies to nauka," in *Gender. Przewodnik Krytyki Politycznej* (Warszawa: Wydawnictwo Krytyki Politycznej, 2014), 97–103 passim.

ocean. [...] We need, I think, to integrate men into our curriculum. Because it is men—or, rather masculinity—who are invisible. [...] Men, themselves, are invisible as men. [...] Everywhere one turns there are courses about men, but virtually no information on masculinity.⁴¹

Closing Remarks

Multitudinous varieties of discourse concerning the issue of gender create a feeling of existence of a rich and diverse range of standpoints and motivations that persuade to take many different courses of action. Essentially, however, this diversity is reduced to a bipolar opposition set by two-component alternative. It refers to only two possible forms of “fundamental hope,” as Józef Tischner used to call this spiritual phenomenon. This thinker, often called the “Polish philosopher of hope,” once wrote: “Tight connection occurs between human hope and heroism, of which human feels capable of [...] if we are able to understand peculiar style that is characteristic for one’s heroism, then we will understand the real measurement of one’s hope. [...] hope also means that human often overruns reality which surrounds him or her, here and now, towards some future, possible worlds. [...] Hope proposes a new world. [...] the measure of hope is decided by values that we experience. Within the framework of hope, axiological acquaintance of the aspect of reality develops. [...] Values might not realize [...]. Human longing and effort might come to nothing. Nothing will ‘eternally rise’ human existence. And then the fate of values will come to ruin. Hope raises protest against such perspective. Gabriel Marcel says that hope shows up in the situation of trial and with its help human overcomes this situation. [...] Hope is the answer for something that lies deeper and is connected with fundamental situation of human existence. An adequate word to describe this situation is tragicity. [...] And so the basic axiological measurement of hope is dualistic. Hope with its external intention goes towards world and uncovers its motion towards values and values motion towards world. Hope with its internal intention goes towards human and exposes him or her as a special value, located in a situation of some tragicity. Responding to tragicity, hope accomplishes, every day, a difficult work of raising human towards his salvation.”⁴²

It seems purposeful to try to define reasons for the human involvement for or against the concept of outlook on the role and gender issues in Tischner’s category of fundamental hope. The decision (which has to be made and in one’s

⁴¹ Kimmel, Introduction to *The Gendered Society*, 5–7.

⁴² Józef Tischner, *Świat ludzkiej nadziei* (Kraków: Znak, 1975), 294–98 passim.

beliefs is just) of involvement with one party in the dispute cannot be shallow and perfunctory, and even if it is such at the very beginning, with commitment in actions to follow that promote the chosen way of thinking, one delves deeper within in, eventually discovering in what way it relates to “that which is connected with the fundamental situation of human existence,”⁴³ but also which value categories are identified as constituent to the human being, and finally what ways of salvation, from currently experienced or sensed tragicity, has to offer to the human. There are exactly two answers that can reach deep enough in this particular connection of anthropology, axiology, and soteriology (let’s emphasize: not necessarily confessionally understood), as indicated in Tischner’s work. Each of them is different and can be interpreted as a variant of one of those two fundamental answers after sufficiently detailed examination. They are as follows:

The first one is a hope for salvation of the integral truth about human and both human nature and essence, truth developed and constantly deepened for over two thousand years of the development of the Mediterranean civilization. We claim that the fullest expression of this truth found its reflection in Christian personalistic anthropology, but many other human concepts exist that are essentially convergent with principal thesis of personalism that belong to the same intellectual tradition and are based on the same historical roots.

The hope for salvation of the global project of interpersonal order is strictly connected with this hope and is based on foundations of natural family bonds joint with particular kinds of love (betrothed, parental, children’s love towards parents, adult’s and children’s love towards close and distant relatives). This project of order is surrounded by many cultural forms of family protection and cultivation in order to make it strong, lasting, fertile, and creative. Such family enables, to people that are part of it, correct growth, ensures the sense of security and acceptance, strengthens people in their dignity and unique value, and gives a strong and favorable base for taking actions for the well-being of others and of community.

A conditio sine qua non of giving rise to and lasting of this hope is faith, that social structure based on concerted action of people who find a strong sustenance in monogamistic communities of many generations’ families of well-developed sense of internal bond is the optimal model of functional and lasting social order, which guarantees solidarity and support in difficult moments in life. This faith does not exclude perceiving numerous pathologies and shortcomings in practical attempts of realization of family and social community model, but connects with the belief that mistakes in realization of rules of family and social intercourse do not deny rightness of those rules.

Contrariwise seems the second type of fundamental hope. It occurs in more and more cases predominantly triggered by emerging from existential tragedies

⁴³ Cf. *ibid.*, 298.

that this first type of hope, deeply inscribed in our cultural tradition, is dying. Under the influence of extremely difficult life experiences, attitude towards culture, tradition, and customs one submits to drastic reevaluation. Among some representatives of feminist or gender theories, the natural need for manifestation of those experiences and sharing one's own experiences of suffering with others appears. Such stories can be found, for example, in Judith Butler and Gloria Watkins (better known by her pen name bell hooks). The first of them writes among other things: "I grew up understanding something of the violence of gender norms: an uncle incarcerated for his anatomically anomalous body, deprived of family and friends, living out his days in an "institute" in the Kansas prairies; gay cousins forced to leave their homes because of their sexuality, real and imagined; my own tempestuous coming out at the age of 16; and a subsequent adult landscape of lost jobs, lovers, and homes. All of this subjected me to strong and scarring condemnation but, luckily, did not prevent me from pursuing pleasure and insisting on a legitimating recognition for my sexual life. It was difficult to bring this violence into view precisely because gender was so taken for granted at the same time that it was violently policed."⁴⁴ Grown up in extremely difficult conditions on the margin of society, the author of *Feminist Theory. From Margin to Center*, recollects her traumatic experiences from early life: "As Black Americans living in a small Kentucky town, the railroad tracks were a daily reminder of our marginality. Across those tracks were paved streets, stores we could not enter, restaurants we could not eat in, and people we could not look directly in the face. Across those tracks was a world we could work in as maids, as janitors, as prostitutes, as long as it was in a service capacity. We could enter that world but we could not live there. We had always to return to the margin, to cross the tracks, to shacks and abandoned houses on the edge of town. There were laws to ensure our return. To not return was to risk being punished."⁴⁵

Causes that invoke such tragic and stigmatic experiences in reasoning that propagates gender are not perceived in a specific connection of casual and random, although inevitable and cruel in the perspective of individuals or entire social groups. As a reaction to a long-lasting and painfully experienced injustice, inequality and other manifestations of lack of tolerance and neighbor love, general theories containing accusation towards the entire norm, belief, directive, and action system are created. Then, fundamental hope directs itself towards radical perspective of system change. Neither immediate repair actions, nor cosmetic reformatory procedures in a small, local scale are considered sufficient enough. If the change is to be radical, then it has to be carried out at the roots

⁴⁴ Judith Butler, Preface to *Gender Trouble. Feminism and the Subversion of Identity* (New York and London: Routledge, 2010), xx.

⁴⁵ Hooks, Preface to *Feminist Theory*, ix.

(*radix*) of evil and heal them. Where are those roots situated? For the radical gender revolutionists the answer is simple. Incorrectly shaped cultural norms, especially those, which are connected with gender and sexual perception of every human being have to be indicated. These norms, effective in the extent of cultural practice, have great power, owing to which effective pressure is put on individuals forcing them to an imposed and fixed scenario of social and sexual roles and behaviors. These forced scenarios do not take into account subjective feelings of potential role performers. None of the guardians of tradition want to differentiate between those who—by impersonating socially accepted roles—find their life's calling and derive deep, personal satisfaction, and those who feel pressure of imposed roles as cruel violence, plight, enslavement, and dehumanization.

The principle of self-defense, respected in any civilized society, opens the field for necessary actions, whose purpose is to salvage the sense of personal dignity, protect from humiliation and marginalization, and enforce the law to derive satisfaction from individually preferred lifestyle. And the only way to achieve this goal, in the opinion of like-minded, runs through the significant transformation of the ways of thinking and valuation. Everything that leads to injustice, harm, and undeserved suffering should be abandoned, starting from the deepest foundations of cultural coexistence that have been in place until now.

One out of challenged fundamentals, which becomes the victim of the revolutionary zeal, is the so-called ontological realism: if reality is the source of oppression, then this is reality that should be denied. Logical (although actually it should be called: paralogical) equation of assumptions of ontological realism, with claims characteristic for constructionist positions leads to completely wrong (from the point of view of the classical theory of truth) convictions that every human being has the unlimited right to recognize any view as true, and the right to be guided by principles which seem to be compatible with arbitrarily accepted convictions about reality. Therefore, whether we claim (standing on one side of the dispute) that a human body owns each-time specified psychophysical constitution, which determines the affiliation to one of the two sexes—male or female—or exhibits certain anomalies based on simultaneous co-partnership, however, not to the same extent, female or male features; or we claim with conviction (standing in opposition to the previous position) that only one's own desire and self-determination of will decide what is our identification in terms of sex and gender—it only depends on a free choice according to the principle of freedom of speech, thought, and belief. If one does not intend to acknowledge that one's own body compressed together with its psyche objectively defines one's belonging to the one biologically specified sexual category, one should be free to refuse, or even provide cultural tools for the creation of a new sexual identity totally independently on the laws of nature. It is useless to argue that science and common sense are the protectors of objective facts, verified empiri-

cally and expounded on the basis of fundamental principles of nature. One may then meet with covetous counter-arguments, for example expressed as follows: “In attacks on gender studies the argument about unscientific approach occurs with a disarming naiveté. The attackers appraise theories and studies notably inspired by the feminist thought, as if there is clarity, what science is and how to cultivate it. [...] it is tacitly assumed that it is objective, neutral, and coherent. Owing to that we can recognize reality and submit it to scrutiny. [...] but such concepts of science have not been accepted in its frameworks for at least fifty years. [...] the vision of science as an edifice of knowledge which is based on consistent principles, and which is aware of the shape of reality, was questioned by logicians. [...] the belief in neutrality and objectivity of science was strained by the sociology of knowledge and the study of science [...],” etc.⁴⁶ Therefore, there is no distinguished truth-discourse, everything is subjected to arbitrary and subjective judgments, in a word—*As You Like It*.

Whether this road—created out of despair and disillusionment, sense of grievance and longing for justice, however, founded on the negation of evident truths of logic, the natural sciences and metaphysics; the road that leads towards equal-validation of any convictions, just to satisfy subjective tastes and emotions—may change the world for the better? There are no visible and rational presumptions which would indicate it. If we equate all the views, true and false, we will deprive ourselves of the only one certain basis on which one may find support, in order to conduct, in an effective way, any long-term and wide-ranging reform—because we will be followed by the few, who will be convinced (without having stronger reasons than our own fervent belief and personal charm) that this is us who are right. However, estimation of the destructive strength included in a significant majority of concepts promoting the idea of gender will be presented in a different way. To a large extent, regardless of the topic of presently examined argument, there is still present an aggressive aversion to the traditional (in a postmodern language called “conservative”) attitudes and values. Even there, where the proponents of gender studies speak out, for instance, on issues such as social policy, raising largely legitimate and fair demands leading to the more effective protection of a family by a government, it happens that such action is accompanied by hostile emotional aura directed against a personalistic family model. A good example of such irrational confusion of reasonable expectations and unjustified prejudices is included in *Gender Anthology. The Guidebook* the text which was written by Dorota Szelewa from the European University Institute in Florence. She writes, among other things: “In the 70s [...] (neo)Marxist feminism interpreted the role of the state in categories of institutionalized oppression, whose essential part was the construction of social policy. On the other hand, some countries started to change

⁴⁶ Gdula, *Odpowiedź na pytanie*, 94–95.

the anachronistic social policy, supporting strictly traditional model. [...] the state not infrequently got behind with social changes—when the shape of the institution of social policy supported, in an active way, the traditional model of marriage and family. Together with the increased development of social entitlements, the stronger tension was arousing between new social needs and the undeveloped institutions of welfare state. However, the role of the state as the institutionalized patriarchy was not so obvious. [...] Most of the post-communist countries do not follow the trend in the Western social policy described above, and the reason for aversion to the idea of gender, feminism, gender equality, and new forms of partnerships/families, is caused by the fact that these notions are understood as an attack on family values, compared with perceived as the oppressive policy of the socialist state. [...] After the collapse of the old system, the countries of the Eastern Europe wanted to ‘go back to normality,’ in a public debate a conservative rhetoric concerning the roles of gender appeared, and these countries were marked by the wave of antifeminism. Until now, the governments of the Eastern Europe seem to bewitch the reality, enforcing only those instruments of social policy, which support the traditional division of roles in a family, by the extension of paid parental leaves, without guaranteeing such leaves to the other parent, and neglecting care services for the youngest. It does not bring results—we are at the bottom of Europe in terms of fertility. Other waves of the moral panic and the search for an enemy in the form of gender will not change anything [...].⁴⁷

It must be admitted that in many countries and communities, the ongoing dispute over the significant hope, connected with the search for the optimum model of realization of gender roles in the psychosomatic and socio-cultural field is marked by many harsh words and phrases, which are not always adequately thought-out, often unjust and unfair, sometimes blatantly false, revealing superficial knowledge or even ignorance, and from time to time—deliberate malice. I prefer not to give specific examples, although they can be easily found while visiting websites suggested by the search engine, after entering the password gender, or while tacking how the existence of this issue is presented in mainstream media.⁴⁸ But it is not the point to stigmatize anyone for using a crude

⁴⁷ Dorota Szelera, “Gender w polityce społecznej: nie ma odwrotu,” in *Gender. Przewodnik Krytyki Politycznej* (Warszawa: Wydawnictwo Krytyki Politycznej, 2014), 157–164 passim.

⁴⁸ In this case, it must be clarified that current affairs programs and debates organized by TV stations do not reflect the real views of people who take part in these media spectacles, since such performances are carefully staged according to “higher-order logic” and subordinated to the main strategic objectives created by television. These objectives include: ensuring high viewership, providing mass entertainment for an audience and attracting numerous advertisers. These strategic objectives correspond to the carefully selected tactical solutions. Thus, as Anna Nacher, the media expert claims, “the analysis of the characteristics of TV discourse leads to [...] the idea the television is a sphere organized by conflicts, and hence it is open to multiple readings and identifications.” In reference to the presentation of the issues of sex and gender which

language, which is rich in words that hurt. It is clear, that these are reprehensible actions which definitely should not take place. However, the actual problem lies even deeper. An assumption, that if an individual human being was given the unlimited right to shape one's own subjective norm of the sexual behavior and was allowed to ignore the consequences of one's own, the limitations of shaped psychophysical constitution and replace it by any phantasms on the subject of one's own sexual identity, then we would delete the reasons of dangerous pathologies and we would take a step towards a more perfect world, would be a dangerous and harmful illusion. Multiple causes—often important, often connected with a large scale of experienced sufferings and resentments caused by them—for which people eagerly get carried away by suggestive stories about a possible liberation from constricting biological ties, psychology, and oppressive social structures. The scenario of radical transformation of the world cannot be uncritically accepted in the name of hope for the actual independence from rules and orders imposed on a man by the objective laws of nature, or left without a comment and without a strong response towards reiterated efforts to discredit many centuries of achievements of philosophical anthropology, supported by the results of research and the theological reflection. In the name of recklessly, superficially, and one-sidedly understood freedom of an individual, we should not deprive ourselves of the chance for a real spiritual growth, which is possible only if instead of taking offense at the voice of truth, we will do everything to make this voice clearly audible again and try to do our best to correlate the sense of one's own life with earnestly acquired knowledge about what reality really is, and not be content with solely wishful thinking.

are present in television program, the author comes to a conclusion that “the conflict between the opinions of critics [...] and the typical tastes of millions of viewers, who just sit in front of television set [...] may be treated as a conflict about the reading of identity categories. At stake in this game is to remove from the visual field (and cultural valence) the sexual identity which is unceasingly categorized as a conflict. More than that, it is the conflict with constantly postponed ideological closure” (Nacher, *Telepleć. Gender w telewizji doby globalizacji* (Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego, 2008, pp. 157–58)). Krzysztof Wielecki very clearly and bluntly describes the same mechanism of the advantage of the ludic function over the substantive function which is visible in television programs. The author writes about the way in which media present the phenomenon of homosexuality: “an example of this status of the social dialogue is the fabricated by media discourse about homosexuality, the main instrument of worldwide fun. In order to increase viewership, a man whose suffering can be seen in his eyes is shown, with his funny way of being. He distributes pamphlets about the sexual life, the pamphlets we would not like to read even if they were about heterosexual practices. However, on the other side, there is a fascist boor, whose greatest achievement is his heterosexuality. [...] Why such people hold discussions in the public sphere? Because it is more spectacular, shocking, sharp, and amusing. It is the logic of mass culture carnival that rules here as well” (Wielecki, “Postny karnawał kryzysu postnowoczesności,” in *Kryzys postindustrialny interpretacje, prognozy. Perspektywa europejska*, ed. Piotr Mazurkiewicz and Krzysztof Wielecki (Warszawa: Centrum Europejskie Uniwersytetu Warszawskiego, 2007), 18.

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Krzysztof Wieczorek

Famille dans le monde contemporain: Doctrine catholique sociale face à l'idéologie de genre

Résumé

L'homme contemporain se trouve face à un dilemme important. En cherchant sa propre identité et son modèle de vie dans la communauté humaine, il peut choisir une des deux attitudes qui sont en principe contradictoires. La première, formée par Catholic Social Teaching et établie sur le fondement de l'anthropologie chrétienne, conduit non seulement à l'auto-identification dans le cadre d'un modèle ayant deux valeurs et concernant l'être humain comme un homme ou une femme, mais aussi à l'autoréalisation dans le cadre d'un des rôles traditionnels sociaux et culturels, propres à un genre biologique déterminé. La seconde s'appuie sur l'idée de la déconstruction postmoderne de la catégorie de sexe, ce qui conduit en effet à la dilution de l'identité sexuelle et à la négation des critères qui étaient élaborés durant des siècles et qui concernent le choix de son propre chemin de vie prenant en considération l'opposition et la complémentarité d'un homme et d'une femme. L'article juxtapose les arguments en faveur de la première et de la seconde option ; en plus, il examine les conséquences probables des choix individuels faits dans le cadre de cette alternative.

Mots clés : famille, genre, doctrine catholique sociale, compétences axiologiques, déconstruction de la réalité

Krzysztof Wieczorek

La famiglia nel mondo contemporaneo — dottrina sociale cattolica e gender

Sommario

L'uomo contemporaneo si trova di fronte a un grande dilemma. Nella ricerca di una propria identità e di un modello di vita all'interno della comunità umana, egli ha una scelta tra due atteggiamenti fondamentalmente inconciliabili fra loro. Il primo, formato da Catholic Social Teaching

e basato sui fondamenti dell'antropologia cristiana, porta all'auto-identificarsi nell'ambito di un modello umano bivalente come uomo o donna e all'auto-realizzarsi in uno dei tradizionali ruoli sociali e culturali appropriati per un determinato sesso biologico. Il secondo si basa sull'idea postmoderna di decostruzione della categoria "sex", che di conseguenza porta alla disgregazione della propria identità sessuale e alla negazione dei criteri di scelta, elaborati nel tempo, del proprio stile di vita, tenendo conto dell'opposizione e della complementarità tra uomo e donna. L'articolo mette a confronto gli argomenti a favore della prima e della seconda opzione e analizza le probabili conseguenze delle scelte individuali di tale alternativa.

Parole chiave: famiglia, gender, dottrina sociale cattolica, competenze assiologiche, decostruzione della realtà

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The Role of Women in the Development of Human Rights

Abstract: This paper reflects upon the task of women in the context of the development of human rights. Human rights are depicted as something that is recognized personally. Since women have felt injustice for centuries, they constantly sought to solve this ethical problem by referring to the biblical, anthropological, philosophical, historical, and legal context. Even in our times the inequality is still evident in the field of human rights; however, not so *de iure* as in practice. Equality and human rights are for all. Inequality is embarrassing. Contemporary phase in the development of human rights, which includes massive gender ideology, rights of LGBT people, and practices of juvenile justice, becomes dangerous not only for women and men, but for children and families as well. Wide-spread construction of gender theories comes shoulder to shoulder with an ambivalent effect, which includes dismemberment of society, losing personal identity, disintegration of families, incomprehension of the institute of marriage and thus leads to the dominance of minorities. European society loses rationality, which is substituted by manipulation.

Keywords: woman, woman identity, human rights, history, development, gender theory

Introduction

The completeness of humanity consists of two halves: one of the woman, the other of the man. A contemplation dedicated to the role that women had in the development of human rights, in a historical context, is not possible without answering the following questions: Who is man? What is man's condition in this world? What are the natural human rights?

A right, from the point of view of philosophy, ethics, and theology, is a given person's prerogative to realize his or her authentic mission. This right is

believed to be good, which in turn, creates an obligation to respect it. Sometimes it is the reason that necessitates the synergy of the good and the right. All people have an inherent right to life and, at the same time, the right to the basic necessities related to their existence. One can learn about this right from the two following levels of human contemplation, that is, the biblical and the philosophical-anthropological. The first level is creationist; it considers man to be created a rational being called into life by creative energy—activity of the Creator, the substance of which is inventive love (*amor ingeniosus*). The Bible holds the keys to the book of the world (*Liber Mundi*), from which we learn that the man is the one created in God's image (*imago Dei*). This image is materialized in the human body, which St. John Paul II characterized by means of the following words: "The body, and it alone, is capable of making visible what is invisible: the spiritual and the divine."¹ The creative act, that is, the phrase "God created" is reiterated in the Book of Genesis and crowned with the following phrase: "So God created mankind in his own image, in the image of God he created them, male and female he created them" (Gen 1:27). This biblical information is of paramount importance for people, since it accentuates the human dignity of a man and a woman. A French orthodox theologian and publicist Olivier Clément (1921–2009) in his essays on the reality of creation emphasized the fact that "for Israel the God's word is a source of every reality, not only the existential and historical, but also the cosmic one."² On the other hand, it is impossible to find in the Book of Genesis detailed information concerning the character of the God-Creator. We, the people, know him only through his manifestations of loyalty, carefulness, responsibility, and love. The God's mystery is gradually revealed through personal experience.

The latter philosophical-anthropological level aims to grasp a man rationally, as a person interwoven in an existential horizon of history. People of all times are forever seeking the sense of proper existence in the world, and thus they develop personal knowledge and keep systematizing it. Besides, they never cease from asking about the origin of things and they would like to know who is he that surpasses them and also who they really are for themselves. The historical context convinces us that people were endowed with intellect and free will. Intellect enables the human to think, to value, and to define, whereas the free will opens a variability of possibilities. From the biblical-philosophical reflections it follows that these gifts should enhance gratefulness and responsibility.

In the plurality of possibilities, as the human intellect and will are not perfect, the following, inadequate wish and pretension is likely to appear: "to be like God," "to be more than others." It is always the inadequateness of human

¹ John Paul II, *The Theology of the Body*, 49, accessed 30.09.2015, http://www.catholicpri mer.org/papal/theology_of_the_body.pdf.

² Cf. Olivier Clément, *Il senso della terra. Il creato nella visione cristiana* (Roma: Edizioni Lipa, 2007), 10.

wishes and pretensions which allows a predominance of ones over the others. God, at the dawn of history, purposefully expressed his fear: “The man has now become like one of us, knowing good and evil. He must not be allowed to reach out his hand and take also from the tree of life and live, and eat forever” (Gen 3:22). And yet it happened. He took advantage of his own liberty and did what he deemed to be proper. The result of this willfulness was disillusionment and a sense of guilt. Adam, who admired his wife Eve before (cf. Gen 2:23), accused her of disobedience, and thus broke their reciprocal act of confidence. On the other hand, Eve tried to pin the blame on the serpent and thus she broke the harmony with nature. Eventually, the chain of accuses culminated in the act of fratricide of Cain (cf. Gen 4:3–9). Based on of the above-mentioned facts and human experience, one can presume that every rebellion against God triggers disorder, also in the relations between human beings. At first, an evil idea is born. If it is not expelled from our minds, it will take root in our heart and manifest itself in our external acts. The imperfect human intellect, as well as will and freedom need to have order, which can be stabilized by means of norms, laws, and rights, which, in turn, are capable of coordinating human relations in both the horizontal (man–man) and the vertical level (man–God). These efforts have been manifested since the ancient times (taboo, myths, epics, antique philosophy, and the oldest codes of law). It is true that all people are born free and equal, but in the past this fact was unknown to a great many of them.

They allowed other people to humiliate them and treat them as slaves, serfs, and servants. Such a situation allowed those, who proclaimed to have power over the others, to do injustice. This superiority shows that people are fragile, and that pride combined with power and force produces evil. Here lie the roots of the senseless superiority of men over women, the outcome of their corporal prestige and political power. Nevertheless, it is not possible to value negatively the human body, gender differences, senses, nature, the Earth, and even the efforts put into achieving social order. I purposefully refer to these, because they were often indicated as the causes of temptations. St. Paul in his Letter to the Galatians writes: “Brothers and sisters, if someone is caught in a sin, you who live by the Spirit should restore that person gently [...]. Carry each other’s burdens, and in this way you will fulfil the law of Christ. If anyone thinks they are something when they are not, they deceive themselves. Each one should test their own actions. Then they can take pride in themselves alone, without comparing themselves to someone else, for each one should carry their own load” (Gal 6:1–5). People have a responsibility towards one another. It should not be imposed by the Law, but inspired by a responsible love. According to the patriarchal model of ancient law codices, as well as the Greek philosophy, women had barely any rights. According to Plato, there was a distinction between the nature of man and woman: “‘And isn’t there a very great difference in nature between man and woman?’ Yes, surely. ‘Does not that natural difference imply

a corresponding difference in the work to be given to each?”³ “Natural gifts are to be found here and there in both creatures alike; and every occupation is open to both, so far as their natures are concerned, though woman is for all purposes weaker.”⁴ Therefore, the political-societal power in the Greek polis was a space entrusted to men and for that reason all structures were adapted to give men power over the justice system.

Natural Rights and Position of Women in the History

The Book of Genesis (Gen 1:27) confirms that a woman is an equal being to a man. She has the same personal rights; however, in the past those had been neglected for a long time. Therefore a question arises: what and who justified the decision to make woman a subordinate person? What kind of authority allowed men to do so? Peccant structures and the power that reflected a lack of understanding of the God’s designs constitute the only reasonable explanation. For that reason, the gender inequality between men and women in the human culture remains a scandalous reality.

It is considered to be gender discrimination, therefore, a negative phenomenon, which causes a serious ethic problem. Sex (gender) in this sense is “[...] a social construction, to which the attributed and expected social tasks, behavior, prejudices, stereotypes, estimations, and self-estimations are related [...]”⁵

Ancient civilizations, cultures, and the Old Testament demonstrate, through documentation, that these trends have been present almost from the very beginning and were transmitted to the New Testament. However, based on Jesus’s behavior it is not possible to deduce whether he made differences between men and women. On the contrary, Jesus defended women a number of times, as the gospels say, for example, Jesus and the adulteress (cf. John 1–10), healing of Peter’s mother-in-law (cf. Mt 8:14–15; Mk 1:30), a woman suffering from hemorrhage (cf. Mt 9:20–22, Mk 5:25–34), resurrection of Jairus’s daughter (cf. Mt 9:25; Mk 5, 41), appreciation of the woman’s faith (cf. Mt 15:28), the widow of Naim (cf. Lk 7:13), Jesus, asked by the Pharisees whether it is lawful to put away a wife answers, “Moses permitted you to divorce your wives because your hearts were hard. But it was not this way from the beginning” (cf. Mt 19:8). Among Jesus’s friends were not only the Apostles and Lazarus, but also Mary, Martha

³ Cf. *The Republic of Plato*, trans. with introduction and notes by Francis MacDonald Cornford (Oxford: OUP, 1945), 150, 453b.

⁴ *Ibid.*, 153; 455b.

⁵ Cf. J. Cviková, J. Debrecéniová, and L. Kobová, *Rodová rovnosť* (Bratislava: Občan a demokracia, 2007), 6.

of Betany, and Mary Magdalene (cf. Lk 10:38–42; Jn 12:1–8; Jn 19:25–26; Jn 20:11–18). The first people Jesus shows himself to, after his Resurrection, are Mary Magdalene (cf. Mk 16,9; Lk 24:1–10; Jn 20, 1; Jn 20:11–18) and the devoted women (cf. Mt 28:9–10). The choice of the apostolic vocation (cf. Mt 8:18–22), made by Jesus, was probably based on the arduousness of the future mission of the twelve (cf. Lk 6:12–16). Sending them all over the world was confirmed by means of the following words: “Son of Man has no place to lay his head” (cf. Mt 8:20). The difficulties and, first and foremost, the uncertain conditions could be very dangerous for women.

Jesus lived in a Judaic background, he knew the patriarchal mentality; nevertheless, his delicate comportment towards women was more than evident. He did not underestimate women, he received their service. The difference between Jesus and other men, who went down in history, is that Jesus thoroughly respected the God’s Law and the Law identified with the truth: “I am the way and the truth and the life” (cf. Jn 14:6). The reason why men do not behave in accordance with the truth, law, and justice, stems from the unjust structures and their desire for power and supremacy. These allusions are also evident in St. Paul’s words concerning the order during the liturgical assemblies: “But I want you to realize that the head of every man is Christ, and the head of the woman is man, and the head of Christ is God” (1 Cor 11:3). In another part he writes: “Let your women keep silence in the churches: for it is not permitted unto them to speak, but they are commanded to be under obedience as also saith the law. And if they will learn any thing, let them ask their husbands at home: for it is a shame for women to speak in the church” (1 Cor 14:34–35).

The ancient mentality only recognized the rights of a woman–mother. This status results from the fact that in the political, social, and religious context, throughout centuries, the men’s word carried more weight, which was also manifested in the formation of laws and norms. In accordance with this trend, regarding women, it was assumed that they should not be well-educated, particularly in the field of philosophy, law, theology, and medicine. Women-philosophers appeared as late as in the 20th century, similarly as women-lawyers and women-doctors, who appeared a little earlier. The right to study theology was given to women only after the Second Vatican Council. The first Doctors of the Church (St. Therese of Avila and St. Catherine of Siena) were also proclaimed by Pope Paul VI only after the Second Vatican Council.

Nowadays, such discrimination *de iure* is prohibited, but in practice it is permanently present. It manifests itself in the discrimination connected with unequal salaries for the same work, in domestic violence, in underestimating women in scientific activities and also in efforts undertaken with a view to fossilizing the so-called traditional roles.

Participation of Women in the Development of Human Rights

Right are moral principles that are recognized personally. It becomes more evident when applied in a broader context. Where there are no rights, the truth is absent as well, and the problem eventually shows itself in the right light. However, hard and fast rules with rigid sanctions are not sufficient. Rights can be defined with regards to people's awareness of what is considered as proper and worthy of respect. Due to the fact that women in history did not have equal rights the situation made them overcome countless obstacles, which has certainly strengthened their character as well. In consequence, women are believed to be more persistent, more patient, and more hardworking; they are said to be able to withstand more pain.

The prototype of woman's dignity in the *New Testament* is Mary, the Mother of God, a woman full of grace (*gratia plena*). In the entire human history there were also saint women and mothers who did not pursue (likewise Mary) social appreciation. Among those was the heroic figure of antiquity—Antigone, who acted according to her conscience; women of the first centuries, who died the death of a martyr out of their love to Christ (St. Agnes, St. Cecilia, St. Agatha, St. Lucia), or the Roman empress St. Helen (225–330); the wife of Emperor Constantius Chlorus (250–306), and the mother of Constantine the Great (275–357). The latter one, owing to her real power wedded with sanctity and ambitions, contributed to the spreading of Christianity.⁶ Hence the bishop of Milan St. Ambrose (340–397) spoke about her with great respect and praised her behavior. St. Monica, the mother of St. Augustine, deserves recognition for her faith and exemplary care. Pope Gregory the Great (540–604), during his pontificate looked at women with great clemency based on the respect toward Mary, the Mother of God. Several centuries later, St. Anselm of Canterbury (1033–1109) expressed his belief that both Adam and Eve were equally responsible for the fall of man. In this context, Troung's opinion is very interesting: "If God would like to superordinate the woman, he would create her of Adam's head, and if He would like to make her as the lower creature, he would create her of man's feet. Yet he created her from the middle part of his body in order to outline that they are equal."⁷

There is abundant medieval literature that informs us about activities undertaken by women. However, such literature includes information mostly about women of higher societal order (monarchic and aristocratic), owing to chronicles and personal correspondence. Examples of this are St. Agnes of Prague (1211–

⁶ Cf. *Legenda Aurea of Giacobe Varagine* (13th century).

⁷ Cf. J. G. N. Troung, *Tělo ve středověké kultúře*, 1. vyd. (Praha: Vyšehrad, 2006), 13.

1282), St. Elizabeth of Ugrian (1207–1231), St. Hedwig Polish (1373/1374–1399), or women of devoted religious life: St. Clare of Assisi (1194–1253), St. Catherine of Siena (1347–1380), in the period of Renaissance St. Teresa the Great (1515–1582), St. Giacinta Marescotti (1585–1640).

Nevertheless, the sin and subordination of women had been stressed for many centuries. Also the responsibility for infertile matrimony rested exclusively with women, whereas adultery on the part of men was always tolerated. Medieval law even acknowledged legitimacy of illegitimate children; illegitimate origin of candidates for priesthood was not an obstacle, though the right to inherit was denied to widows. Man had the right to educate his wife and he could resort to physical punishment.

Even at the end of the 15th century Christian courts rejected applications for matrimonial separation put down to torment and whipping. As we can see, the medieval criminal law provided women with a limited possibility of defending their honor. A position of a woman depended on the opinion of her father or husband. Simultaneously, we cannot say that there were not any happy marriages; however, such was the case only when a husband gave freedom to his wife.

Monasteries were guarantees of certain legal freedoms in medieval and also in modern times. Candidates for religious life were provided with basic spiritual education, possibility of self-realization in charitable activities by taking care of the sick, and also in education (orphanages). This was practically the only way to avoid subordination to men, though sometimes women were forced to lead monastic life with a view to avoiding the partition of property.

In the 15th century an educated Italian woman (married in France) expressed her opinion on the traditional view of women with a certain degree of courage. Since she was a widow she earned her living from transcription of texts and writing, she could respond to the satiric work entitled *Novel about the Rose*, which described the relation between men and women. Women were presented there in a bad light. As an opponent of the traditional view, she wrote a book entitled *The Book of the City of Ladies* (1405), in which she reached three important conclusions:

1. Woman's soul is of equal value to man's soul.
2. Female body is equally perfect to the male body.
3. Women are also capable of governing.

In the times of the Hussite expansion in Bohemia, Jan Hus (1369–1415) also agreed that the status of man and woman before God is coequal, since women have also understood the words of the Scripture. In the 16th century great discussions were held, which focused on the connection women had with witchery. Men tried to prove that women, since they are the weaker gender, are to a larger extent than men prone to yield to devil.

The polemics concerning women was intensified owing to the naturalistic theory of Jean Jacques Rousseau (1712–1778), who promoted the idea, which

assumed that “the attractions of home life present the best antidote to bad morals.”⁸ However, the philosopher argued that according to the natural order all people are mutually equal to one another and their common calling is to be a human being. Before a profession is instilled into anyone by their parents, he or she is called to the human life by the nature. The differences between people are exclusively historical.⁹ As it was mentioned by Paul Johnson “In particular he wanted smiles of society women.”¹⁰ He depreciated his mistress, who stayed with him till his death, he made jokes at her expense in society, though he misused her care, primarily he was a self-centered man and “did not even note the dates of the births of his five children and never took any interest in what happened to them, except once in 1761, when he believed Thérèse was dying and made a perfunctory attempt, soon discontinued, to use the cypher to discover the whereabouts of the first child.”¹¹

Attempts made by women to become involved in the development of human rights were more intensively visible after the French Revolution, which—owing to its program slogan: *Freedom, Equality, and Fraternity*—woke up in women the desire to participate in the public life more actively. Article 1 of the *Human Rights Declaration* from 1789 states that: “People in all their born days are free and in their rights equal to each other. Social differences are eligible just in case of common good.” Seeing the huge injustice in the society, October 5 the French women left the Paris Suburb of San Antoine for Versailles to ask the king to give them bread and grain for their families. Thousands of men joined them and they together plundered the king’s granaries. Olympe de Gouges used the revolutionary situation and together with other women submitted their List of Requests to Constituent Assembly. Moreover, they founded two societies: the Sisterly Society and the Society of Revolutionary Women. Among their requests there was one which concerned the legal system, namely, women’s right to be a party to legal proceedings, as well as the right to an attorney. Naturally, the male revolutionists, who did not show a great tolerance towards women, considered their requests irrelevant. The Procurator of the Commune of Paris Pierre Gaspard Chaumette (1763–1794) proclaimed that women are a “shame of nature.” Chaumette supported terror, showed strict anti-Catholicism, and since 1792 he was to blame for all the executions. Finally, the long arm of the law reached also him, which led to his execution in March 1794.

⁸ Cf. Jean-Jacques Rousseau, *Emil alebo o výchove*, 2 vyd. (Bratislava: Slovenský spisovateľ, 2002), 18. Émile—Or, Concerning Education. A Project Gutenberg book, <https://www.gutenberg.org/files/30433/30433-h/30433-h.htm>.

⁹ Ibid., 12.

¹⁰ Cf. Paul Johnson, “Jean-Jacques Rousseau: ‘An Interesting Madman,’” in *Intellectuals* (HarperCollins e-books), 11, www.thedivineconspiracy.org/Z5260P.pdf.

¹¹ Ibid., 21.

Even in the 19th century the French philosopher and sociologist August Comte (1798–1857) considered women unable of undertaking such intellectual activity as men. Despite this the patriarchal perception began to gradually diminish. The English defender of freedom and supporter of liberalism John Stuart Mill (1806–1873) contributed to this trend. In his essay entitled “The Subjection of Women,” he made an attempt to argue that the principle of a legal subordination of one gender to another is in itself bad. He considered it to be the obstacle to human development, which should be replaced with the principle of the true equality. Mill further argued that the principle of justice required that in all spheres of the social and political life women should have the same rights as men. According to Mill there are two opinions to support it:

In the first place, the opinion in favour of the present system, which entirely subordinates the weaker sex to the stronger, rests upon theory only; for there never has been trial made of any other: so that experience, in the sense in which it is vulgarly opposed to theory, cannot be pretended to have pronounced any verdict. And in the second place, the adoption of this system of inequality never was the result of deliberation, or forethought, or any social ideas, or any notion whatever of what conduced to the benefit of humanity or the good order of society. It arose simply from the fact that from the very earliest twilight of human society, every woman owing to the value attached to her by men, combined with her inferiority in muscular strength, was found in a state of bondage to some man.¹²

Deeper in the book we find an even harder reproach: “Men do not want solely the obedience of women, they want their sentiments. All men, except the most brutish, desire to have, in the woman most nearly connected with them, not a forced slave but a willing one, not a slave merely, but a favourite. They have therefore put everything in practice to enslave their minds.”¹³ Mill also provided examples from history: “But it is quite certain that a woman can be a Queen Elizabeth, or a Deborah, or a Joan of Arc, since this is not inference, but fact. Now it is a curious consideration that the only things which the existing law excludes women from doing, are the things which they have proved that they are able to do.”¹⁴ According to the philosopher, women in the 19th century proved to have influenced “most marked features of the modern European life—its aversion to war and its addiction to philanthropy.”¹⁵

The German environment of the 19th century saw the birth of very unfavorable attitudes towards women, opposite to the positively tuned English law. The

¹² Cf. John Stuart Mill, *The Subjection of Women*, <http://www.constitution.org/jsm/women.htm>.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

radical German philosopher, critic of everything that was Christian, nihilist, antifeminist, and a promoter of the will to power, Friedrich Nietzsche (1844–1900), considered feminism to be the “nastiest progress” in the European history. In the morals of men, which he presented in his work entitled *On the Genealogy of Morals* (1887), there was no place for a physically weaker gender.

Another extreme belief was presented by one of the founders of the German Social-Democratic Party and the Second International, August Bebel (1840–1913), who wanted to replace the undignified position of women in family with a free relationship. This opinion, which bore a tone of Marxism, was hardly thinkable, since the independence of women is one case and the responsibility of fathers another.

Since the mid-19th century women have developed their initiatives in central Europe chiefly by means of founding women’s singsong groups, acting and tutorial classes. The process of dividing the so-called natural traditional roles continually weakened along with the development of industry. Together with the working activities of women, their legal claims for higher education have increased. The First World War expunged the remnants of the last objections raised against the working activities undertaken by women. They proved that, due to the deficiency of labor force connected with the military operations, they are able—if necessary—to carry out also men’s work. Therefore, after the First World War social democrats included four important points in their political program: emancipation of women, better access of women to education, membership of women in trade unions, electoral law for women.

This progress has increased the legal awareness of women. They started to enroll at universities for almost all fields of study. Famous in this context is Madame Marie Curie-Skłodowska (1867–1934), the first woman who not only accomplished the study of physics and chemistry at the Sorbonne University in Paris, but also was awarded the Nobel Prize for physics and chemistry in 1911. Edith Stein (1891–1942), the first female philosopher and Carmelite, who participated in the development of phenomenology and eventually died in a gas-chamber of the concentration camp in Auschwitz, constitutes yet another good example. Today Edith Stein is a canonized saint. Among the important women of the 20th century is also the blessed Mother Teresa of Calcutta (1910–1997), the founder of the Missionaries of Charity and a Nobel Peace Prize winner, awarded for her lifelong humanitarian activity and love towards the poorest of the poor.

The Need of Fair Equality of Rights and the Mentality of Gender Ideology

In present times there are many institutions, associations, organizations, as well as laws, whose role is to make sure gender discrimination does not exist. However, parallel to these external laws there are also internal laws, the so-called unwritten laws that allow for differences, for instance, in remuneration for the same work, in the division of housework, in education, as well as in traditional prejudices. Today we also encounter opinions, which assume that men are more courageous, and thus they can take more risks, they are more mobile and there is no danger that they will take maternity leave, therefore men are given priority in job interviews. The equality of men and women is constantly discussed, but the discrimination is still visible and probably unsolvable.

Our summary shows the need of increased empathy in the contemporary society. However, there is a pressing need to apply precise methodology, a specific program, or a long-term project, which could eliminate the contradictions that polarize relationships and the negative extremity, not only by means of words and legal theories, but also in practice.

For many centuries only two genders and two sexes, men and women, had been a topic of debates. Since 1995, a discourse, which promoted a bigger number of genders (man, woman, and today also neuter), has become more and more popular in the European Union. Gender neuter ensures that people can decide freely who they want to be in their lives (gays, lesbians, heterosexuals, transsexuals, transvestites, cross dressings, etc.). Efforts are undertaken to spread this social variability without paying attention to the fact that the gender diversity is not a social or cultural reality, but rather a natural one. Sex and gender have nothing to do with possibilities, but they are connected with the givens. The above-mentioned gender identities and their reliance on the law are rightly confusing and cause many problems (many of these people are renounced by their own families; others lose their jobs, friends, etc.).

The European Parliament gives green light to gender pluralism and aims at making the observance of such pluralism obligatory. In some countries gay marriages, laws regarding the inheritance of common property, the adoption of children by homosexual couples are part of everyday life. However, we too rarely emphasize the fact that mother, father, and family are irreplaceable by anyone or anything. Regarding the artificially forced laws—parent one and parent two—we already have the first victims. On May 22, 2013, a famous French historian and essayist Dominique Venner (1935–2013) shot himself in Notre Dame Cathedral in Paris in protest at homosexual marriages.

A wide range of gender brings an ambivalent effect: the loss of identity and the birth of a new, very dangerous ideology. Consequently, the laws gov-

erning family and the institution of marriage itself—as a bond of a man and a woman—are weakened. For a reasonable person the conclusion seems obvious. Owing to the gender ideology the developed part of the world begins its process of decomposition.

The fact that the society is divided constitutes a significant problem. This division permits: dominance of a minority view, a massive absolutism of the requests of minorities and their progressive implementation into the legislation of the European Union member states. The problem is that contemporary people adopt new legislation without thinking what it will bring in the future. They live in some sort of spiritual lethargy and they forget that the investment into faith, trust, love, and relationships is worth, no matter how much patience it requires. Reasonableness spontaneously disappears from the European tradition and it is replaced with manipulation. This fact is worrisome, especially when we take into consideration the following two questions: Will at least one culture that appreciates family survive? Who and what will guarantee that the European women do not lose their legal achievements for which they have fought for centuries? What should be done in practice to create a more righteous structure, which would take into consideration not only the relational gender equality between men and women, but also normativeness, which would respect the dignity of every person? First of all, we need the courage to move from a personal act to a moral act going through stages, which will more widely resemble love, fraternity, solidarity, regardless of whether it is a male or a female, a relative, a neighbor, or a totally unknown person.

There is not only a very important program, which contains meaningful values, but also thematic openness and objectivity about what we really want. This program assumes that the real aims should dominate, which would not exclude anyone from the human community and, at the same time, would be good for everyone. If we do not begin from this program, we will miss the goal of all theories, which will finally turn out to be useless. The contemporary world does not need any new theories and documents, these are already in abundance. The world today needs methodology, which would tell it how to live the real fraternity and community in practice, as well as regain the dignity.

All people are entitled to equality and justice, but not all are capable of accepting this fundamental principle. Some men perceive the equality between men and women indifferently, some are bothered; others are open-minded towards the pluralistic gender variability, which dissolves the person's identity. To make sure that we realize our own freedom, we need to respect the freedom of others. Naturally, this is not the triumph of one over the other. It is the elimination of a sinful structure and a distribution, owing to an incorrect human ambition for power and control over others, as well as arrogance and vaunt, which is the fruit of an unhealthy policy and an unhealthy society. Both axle and change depend on the upbringing and education, aided by catechesis and

homilies. Homilies which people finally understand and during which by listening and thinking about what the Lord said and did are capable of noticing the beauty and wounds, the pleasure and sadness.

In order to realize our own freedom we need to respect the freedom of other people. Naturally, it is not about the triumph over one another, but about the elimination of sinful structures and divisions, which occur due to incorrect human ambitions for power and control over other people, as well as arrogance and vaunt, which are the fruit of an unhealthy policy and an unhealthy society. Improvement and change depends on the education in families and schools, courtesy of catechesis and homilies. The purpose is to help people finally understand what it means to obey the Lord, reflect upon what He said and what He did, and simultaneously look at his beauty and wounds, joy and sadness.

Conclusion

José Ortega y Gasset purposefully remarked in his book entitled *The Revolt of the Masses* (original title *La rebelión de las masas*): “The function of commanding and obeying is the decisive one in every society. As long as there is any doubt as to who commands and who obeys, all the rest will be imperfect and ineffective. Even the very consciences of men—apart from special exceptions—will be disturbed and falsified.”¹⁶

In Europe, where we have lived immersed in the Christian tradition for two thousand years, we currently strive to achieve human and social rights that will be good for everyone. Last year we celebrated two significant events in the field of the human rights:

The seventeen hundred years ago the Edict of Milan (313), which touched upon toleration and included the right of Christians to freely practice their faith, was promulgated. Due to this act Constantine the Great spread Christianity into the center of Roman Empire and thus allowed the Church to expand. We also commemorated the 25th anniversary of the publication of St. John Paul II’s Apostolic Letter *Mulieris Dignitatem* [On the Dignity and Vocation of Women], in which the Supreme Pontiff deeply underlined the dignity of woman—mother in family and in marriage, virginity (*virginitas*), and the spiritual maternity of women, who chose this status for the kingdom of God. In both ways “the personality of a woman” can be realized in harmony with the demands of Gospel (comp. *Mulieris Dignitatem*, 20–21).

¹⁶ Cf. José Ortega y Gasset, *The Revolt of the Masses*, http://archive.org/stream/Revolt_201304/revolt_djvu.txt.

In the area of equality within the relationship man–woman, much has changed over the centuries; however, absolute justice is clearly still not there. Still many people are unaware that this inequality brings shame on the humanity as a whole. This ignorance leads to incomprehension, which in turn means not respecting the intentions of God. It is a weakness, humiliation of the human face in its presence, disregarding the recommended mercy towards the weaker.

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Helena Hrehová

Rôle des femmes dans le développement des droits de l'homme

Résumé

L'objectif principal de l'article est d'analyser la contribution des femmes à la promotion des droits de l'homme. Les droits de l'homme étaient perçus depuis toujours comme quelque chose dont on fait la connaissance personnellement. Ayant éprouvé durant bien des siècles différentes formes d'injustices, les femmes ont pris le défi de définir convenablement leur place dans la société en se référant à l'argumentation biblique, anthropologico-philosophique et historico-juridique. Malheureusement, en ce qui concerne le respect des droits de l'homme, différentes formes d'inégalités sont aussi présentes dans les sociétés contemporaines. À l'étape actuelle du développement des droits essentiels apparaît une autre nouvelle idéologie qui devient dangereuse non seulement pour les hommes et les femmes, mais aussi pour la famille et les enfants. À ces éléments principaux appartiennent la théorie de genre, les droits des personnes LGBTI et le système de justices pour mineurs (juvenile justice system). Une nouvelle interprétation des droits de l'homme conduit entre autres aux divisions dans la société, à la perte de l'identité, aux troubles de l'institution du mariage et à la domination des minorités. Dans le différend d'aujourd'hui sur les soi-disant nouveaux droits de l'homme, différentes formes de manipulations remplacent de plus en plus souvent une argumentation rationnelle dans beaucoup de sociétés européennes.

Mots clés : femme, identité féminine, droits de l'homme, histoire, développement, théorie de genre

Helena Hrehová

Il ruolo della donna nello sviluppo dei diritti umani

Sommario

L'obiettivo principale di questo articolo è quello di analizzare la partecipazione della donna alla promozione dei diritti umani. Da sempre i diritti umani sono stati visti come qualcosa che conosciamo personalmente. Dopo aver subito diverse forme di ingiustizia per molti secoli, le donne hanno intrapreso la sfida di determinare propriamente il loro posto nella società, riferendosi ad argomentazioni di carattere biblico, antropologico-filosofico e storico-giuridico. Purtroppo, anche nelle società contemporanee, sono presenti diverse forme di disuguaglianza quando si tratta di diritti umani. In seno allo stadio attuale di sviluppo dei diritti fondamentali nasce un'altra nuova ideologia che diventa pericolosa non solo per donne e uomini, ma anche per famiglie e bambini. Fra i suoi elementi principali ci sono la teoria gender, i diritti delle persone LGBTI e il sistema di giustizia minorile (juvenile justice system). La nuova interpretazione dei diritti umani porta tra l'altro a divisioni nella società, alla perdita di identità, alla distruzione dell'istituzione del matrimonio e al dominio delle minoranze. Nell'odierna controversia sulla cosiddetta nuova legge dell'uomo, in molte società europee diverse forme di manipolazione sostituiscono sempre più spesso un'argomentazione razionale.

Parole chiave: donna, identità femminile, diritti dell'uomo, storia, sviluppo, teoria gender

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New Feminism as a Response to the Modern Crisis of Community*

Abstract: The article presents and analyzes a number of chosen major arguments of the New Feminists which base their theories on John Paul II's theological anthropology of sexuality and theology of woman. The New Feminism is a kind of personalist humanism which centers its attention on the human person realizing his or her nature within relations of personal self-giving. Assumptions of male and female equality, difference, and complementarity together with the specific female sensitivity towards the human and relationships form the basis for the New Feminist theoretical argumentation and practical postulates. The New Feminism is also a theologically inspired social response to the modern crisis of community and the deficit of affirmation of values such as person or human relations. By offering a serious correction or completion of the modern perspective of freedom and independence with its vision of fulfillment of freedom by love, the New Feminism seems to constitute a necessary kind of social philosophy which does not try to substitute the one-sided concept of freedom with any equally one-sided view of the social bond or addiction to others, but it rather attempts at the reconciliation of values which seem to be complementary.

Keywords: New Feminism, person, community, woman, man, individualism, modernity, freedom, love

* This is a slightly modified English version of the text published in Polish as “Nowy feminizm jako odpowiedź na nowożytny kryzys wspólnotowości,” in *Kobieta w Kościele i w społeczeństwie*, ed. Andrzej Pastwa. *Studia i Materiały Wydziału Teologicznego Uniwersytetu Śląskiego w Katowicach*, nr 78 (series ed. Fr. Bogdan Biela) (Katowice: Księgarnia św. Jacka, 2014), 15–28. More on the analysis of the New Feminism within a broader context of other feminist currents and within the background of the papal development of the concept of reconciliation, the reader can find in my book published in Polish entitled *Skandal i ekstaza. Nowy Feminizm na tle koncepcji pojednania według Jana Pawła II* [Scandal and Ecstasy. The New Feminism within the Background of the Concept of Reconciliation According to John Paul II] (Warszawa: Wydawnictwo Uniwersytetu Warszawskiego, 2015).

We can say that sociology as a modern science was formed as an attempt to analytically approach the problem of the critical state of various types of social bonds. Within this discipline there even have been several trends particularly focused on reflection dedicated to the crisis of community. Naturally, they usually developed in relation to specific crisis waves of social changes. For example, the end of the decade of the seventies of the twentieth century in Western societies was the time of apparent weakening of social ties and increasingly deepening crisis of community widely understood. Sociologists and social philosophers of that time began to more and more clearly recognize and analyze the now widespread manifestations of withdrawal of individuals from various forms of participation in the public sphere and the decline in interest in social life, including the loss of involvement in the life of local communities. While the sociological researchers have tried to accurately grasp these phenomena, including the statistics such as the declining readership of newspapers or participation in political elections, many philosophical analysts tried to investigate the root causes of the observed changes.

Perhaps the deepest search of the roots of the crisis of community within the history of ideas has been accomplished by Alasdair MacIntyre,¹ who saw the beginnings of individualistic thinking at the dawn of modernity. In his view, the end of the Middle Ages brought an end to the teleological thinking, that is, thinking in terms of a common final goal. The common goal implied a common concept of tradition, virtues, and practices to achieve virtues, as well as assumed thinking and acting in terms of community as a certain social whole combined by origin and purpose. Meanwhile, the modern era began as the age of doubt and resignation from the assumption of the existence of perspective that combines people in such a deep sense. On the one hand, the end of teleological thinking can be connected with the consequence of the so-called atomization of modern societies and with the development of individualistically based systems of liberal democracy in politics and capitalism in economy. On the other hand, the end of a community perspective can be associated with totalitarian attempts to cope with the extremes of individualism, that is, the attempts to establish social wholes in ways which were top-down, imposed, artificial, and suppressing the freedom of individuals. Analyses of these issues led Western philosophers and social theorists to formulate a series of standpoints referred to under the name of communitarianism, because they have been united by their interest the community dimension lost somewhere during the development of modern societies. At the same time, they wanted to clearly separate the idea or practice of community from totalitarian projects. In my opinion, the most interesting analysis within this trend is presented by MacIntyre, though he dis-

¹ Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*, 2nd ed. (Notre Dame, IN: University of Notre Dame Press, 1984).

tanced himself clearly from the banner of communitarianism. In a number of publications, MacIntyre demonstrated the attractiveness and superiority of the premodern realism, in comparison with the Enlightenment or the Nietzschean traditions, and accused both of the latter of the inadequate questioning of the fact of dependence of rational thinking and existence on tradition, community, realization of virtues, continuity of thinking, and acting within the framework of assumptions about the order of being and so on.

In a way, analogous arguments were presented by Servais Pinckaers OP in his book *The Sources of Christian Ethics*,² where he showed the modern departure from the Thomistic realism towards Ockham's nominalism in the form of domination of the subjective will over the objective reason, and the preference of constructed rules over the given order of being, etc. What unites these perspectives, critical of the development of modernity, is the diagnosis of the loss of categories of objective good, the common good, a good that is given rather than merely constructed by individuals, and a good as a component of being, which is a gift pre-existing an individual. The loss concerns also the perspective of such a relation between individuals which would not be the exclusive product of individuals, but which would be given to them regardless of their will, in the context of beings in which individuals happen to live. (An example of late modern thinking is the modern constructivist approach to sex and gender, which implies freedom and the possibility of its broad selection and formation.) To put it briefly, realism has been supplanted by nominalism, and organicism by individualism. The nineteenth-century sociological theory of Ferdinand Tönnies³ pictured it as a transition from community to association/society, that is, from communities as entities given by nature to associations as created deliberately by the will of individuals. However, Tönnies and many other sociologists emphasized that both community and association are just two faces of the same reality; the two mixed and always coexisting aspects of human relationships. Modern communitarians, especially those among them who are sociologists, also generally do not even allege that the communities are dead, but identify their state of weakness and try to show desirable ways to strengthen them or rebuild in balance with the development of associations and without hindering the autonomy of individuals.⁴ It could, therefore, be presumed that their position is not entirely nominalist, yet it seems that MacIntyre's or Pinckaers's theses are closer to the truth about the history of ideas, that is, that modernity or at least the Western part of humanity has chosen the way of nominalism and individual-

² Servais Pinckaers, *The Sources of Christian Ethics*, trans. Mary Thomas Noble (Washington, D.C.: The Catholic University of America Press, 1995).

³ Ferdinand Tönnies, *Community and Society*, trans. Charles P. Loomis (Mineola, NY: Dover Publications, 1957).

⁴ Cf. e.g. Amitai Etzioni, *The New Golden Rule. Community and Morality in a Democratic Society* (New York: Basic Books, 1996).

ism, treating traditional community, for example families, as being only socially constructed, rather than given and based on nature.⁵ That is why any appeals made by sociologists to strengthen communities cannot be effective, as they do not call for a change in the dominant perspective of isolated individuals and only artificially and temporarily constructed relations in the face of fundamentally diverse or even radically conflicting final ends (if at all we can allow any meaningful talk about any final end).

It seems that in this situation there is no solution either, theoretical or practical, hence there is no point in the dialogue and search for a common position, or there is a great need for a specific cut of this Gordian knot of disputes by recourse to the practice, life, being, person, and last but not least, to communities which, despite their tendency to decay, somehow still continue to exist today. Basically, maybe one of the most interesting themes of communitarian theories is their common point that the problems which seem to be irresolvable in theory are in fact often resolvable in concrete practical local communities. The pure fact of persistent existence of some kinds of communities in spite of the adverse climate of domination of the individualistic language should raise certain hopes and should be read as a sign of mistake on the part of individualistic thinking. The very fact of continuous existence of many communities, however, does not make communitarians draw an adequate enough conclusion about the deeply social nature of human beings, which makes individualistic perspective inadequate, and about the existence of a certain order in nature, an order of being given to man, including the relational nature of human existence.

In a sense, the cut of the Gordian knot of modern individualism is not so much accomplished by, let us say, only half-communitarian communitarianism, but by an effective appeal to Christian anthropology that is nowadays undertaken by the New Feminism.⁶ It is the kind of standpoint promoting femininity that was inspired by the theology of the body according to John Paul II and the theology of woman and the relationship between man and woman based on equality, difference, and complementarity. The New Feminism is represented by Michele M. Schumacher, Elizabeth Fox-Genovese, Jean Bethke Elshtain, Marguerite Léna, Beatriz Vollmer Coles, Mary Rousseau, or Janne Haaland Matlary, among others. It is a position of personalistic humanism, at the center of which is the value of the human person realizing oneself in relations of self-giving for others. The inspiration came from John Paul II who called for creating a new feminism and his theological anthropology concerning the sexual differences analyzed on the basis of the biblical vision. However, the choice of this anthro-

⁵ Very meaningful is the fact that the modern understanding of nature has been deprived of its metaphysical sense, being limited to the biological understanding.

⁶ I use capital letters in order to refer precisely to the feminism inspired by John Paul II, as well as to differentiate it from other new feminisms in the history of development of the feminist thought and movement.

pology as the basis for the orientation of the New Feminism was motivated by its resonance with the experience of women and their recognition of their nature focused on a specific relationship with the child during pregnancy, as well as the preliminary to this relationship, namely the fact of being a woman in relation to man. The latter relationship in the context of the theology of the body has been attributed the highest rank of importance because “*man became the image of God not only through his own humanity, but also through the communion of persons, which man and woman form from the very beginning.*”⁷ This particular relationship of exclusive, total, fertile, and mutual self-giving of spouses alludes to a special resemblance to the close community constituted by the Holy Trinity. The sense of creation of man and woman lies in approximating the experience of the Trinity to human beings through the union of man and woman. Thus, the bond between the Divine Persons could be somehow, though imperfectly, felt by people. This bond would then connect Christ to the Church in the new covenant of love performed through the Incarnation and Redemption. The pope took up and developed this topic first in the Wednesday audience catecheses devoted to the theology of the body and later in the apostolic letter on women.

The fact that man ‘created as man and woman’ is the image of God means not only that each of them individually is like God, as a rational and free being. It also means that man and woman, created as a ‘unity of the two’ in their common humanity, are called to live in a communion of love, and in this way to mirror in the world the communion of love that is in God, through which the Three Persons love each other in the intimate mystery of the one divine life. The Father, Son and Holy Spirit, one God through the unity of the divinity, exist as persons through the inscrutable divine relationship. Only in this way can we understand the truth that God in himself is love. (cf. 1 Jn 4:16) (*Mulieris Dignitatem*, 7)⁸

In turn, in the Encyclical *Evangelium vitae* published in 1995 the pope urged women to create a new feminism

which rejects the temptation of imitating models of ‘male domination,’ in order to acknowledge and affirm the true genius of women in every aspect of the life of society, and overcome all discrimination, violence, and exploitation. [...] You are called to bear witness to the meaning of genuine love, of that gift of self and of that acceptance of others which are present in a special way in

⁷ John Paul II, *Man and Woman He Created Them. A Theology of the Body*, trans. Michael Waldstein, (Boston: Pauline Books and Media, 2006) (9:3), 163 [Emphasis in all citations present in the original].

⁸ John Paul II, *Mulieris Dignitatem*, accessed 01.10.2015, http://w2.vatican.va/content/john-paul-ii/en/apost_letters/1988/documents/hf_jp-ii_apl_19880815_mulieris-dignitatem.html. Hereafter as *Mulieris Dignitatem*.

the relationship of husband and wife, but which ought also to be at the heart of every other interpersonal relationship. [...] A mother welcomes and carries in herself another human being, enabling it to grow inside her, giving it room, respecting it in its otherness. Women first learn and then teach others that human relations are authentic if they are open to accepting the other person: a person who is recognized and loved because of the dignity which comes from being a person and not from other considerations, such as usefulness, strength, intelligence, beauty or health. (*Evangelium vitae*, 99)

In both documents it is clear that the New Feminism in the vision of John Paul II is not so much and not just a set of demands for legitimate advocacy of the equality of women to men in every sphere of social life in the name of defending the dignity of women,⁹ but also, and perhaps above all, a real attempt to counter the modern crisis of community. Creation of woman next to man as well as her nature itself, which reminds man of his call to personal relation, and the participation of the exceptional woman, namely the Mother of God, in the mission of Redemption (though in its uniqueness constituting a reminder of the beginning of creation and a new beginning of humanity, and a model for all), make men and women aware that even after the original sin the humanity constitutes a certain whole unity and that God invites every person to a love relationship with Him and our neighbors. By this argument the just claim to stand up for equal rights for women as persons, citizens, workers, female consumers, etc. is elevated to a higher level by means of grasping the basis and sense of equality, namely, equal dignity as persons whose simultaneous separateness and difference from a man is to remind him of the deeply relational, social, and loving nature of every human being. Female body, psyche, natural potential, and experience, therefore, demand recognition as they were previously under-appreciated, and because they have fundamental importance for society, especially in times of long already and well sociologically described crisis of social ties, group identity, and concern for others, and the deepening of the different processes of alienation and exclusion. The New Feminism is thus an interesting antidote to the philosophy and practice of individualism, as well as the real appreciation of corporeality neglected since the time of the Cartesian emphasis put on mentality.

What is more, the theological ground of the New Feminism delves even deeper, because an important feature of the female relatedness, which is receiving love in order to respond with love, is attributed to people in general and the Church as a whole: "In the Church every human being—male and female—is

⁹ See e.g. Apostolic Letter *Mulieris Dignitatem* 10, 13, 14, 29; Letter to Women *A ciascuna di voi* 3, 4; Apostolic Exhortation *Christifideles Laici*, 51; Encyclical *Evangelium Vitae*, 99; Message for the 28th World Day of Peace "Women Teachers of Peace" 1995, 9, 11; Letter to the Secretary General of the Fourth World Conference on Women of the United Nations, 5–9; Apostolic Exhortation *Vita Consecrata*, 57; Apostolic Exhortation *Familiaris Consortio*, 22–24.

the 'Bride,' in that he or she accepts the gift of the love of Christ the Redeemer, and seeks to respond to it with the gift of his or her own person" (*Mulieris Dignitatem*, 25). John Paul II thus links women's relatedness with its certain derivative character in the initiative of loving. A cry of delight expressed by the biblical Adam is a symbol of such a specific "fertilization" of Eve to love. On the other hand, the creation of Eve as second to Adam may show her existence as someone related to Adam (and, of course, to God) from the beginning. Thus, it may present her full awareness of what a person needs to meet his or her essence. Adam had to wait for Eve in order to find it out. Of course, the creation of man should be read in manifold richness of interpretation, including the one according to which the word 'Adam' does not apply only to man (male) but rather a human being in general. However, the latter interpretation does not make the former one invalid. It would appear that both interpretations, just as the two narratives of Genesis, can present to us a different, though equally important and complementary aspect of the truth about being human. After all, Adam (a male human being and just a human being) somehow senses the lack of a person equal to him even before the creation of such a person. The woman may not have to search long for this kind of meaning which can be found only in a relationship with another human, especially man in her case. She has a man with his delight over her right in front of her eyes since the beginning of her existence. And from the very beginning she is open to his love, receptive, and responsive: she receives and gives response.

In his Wednesday audiences the pope notices a still different motive of Adam's receptivity. Now Eve is a gift given by God to Adam, so just as Eve accepts the love of Adam (the initiative appears to be on his side), she constitutes the gift for him from God's initiative, while the first recipient is the man (the male human)! Receptivity and initiative, therefore, are mutually intertwined, although the initiative on the side of a woman is more the initiative of God and nature, while within the order of human consciousness and will, it seems to be in some sense more secondary to the male initiative. It is important that this game of mutual gift exchange of selves, according to the pope, does not have significance limited only to the intimate relationship of love between two people.

When we say that the woman is the one who receives love in order to love in return, this refers not only or above all to the specific spousal relationship of marriage. It means something more universal, based on the very fact of her being a woman within all the interpersonal relationships which, in the most varied ways, shape society and structure the interaction between all persons—men and women. (*Mulieris Dignitatem*, 29)

The exchange of personal gifts thus forms a valuable background for understanding what women rightly claim as their rights. From the depths of theology

of the Book of Genesis the pope speaks up for the women's rights not only to be tolerated, or even only respected, but to be loved. Her person and her dignity demand love and the respect for her rights flowing therefrom, not the rights taken from individualistically understood autonomy of isolated individuals. By her mere existence a woman reminds that people should live with others and for others.

A clear reminder of this is femininity connoting openness to the fruit of love between the two, namely a child. This time it is not the man who physically receives a person, but he has to learn the receptivity towards a child from the woman, and in addition he cannot at all experience such a unique relationship which is available only to mother during pregnancy.

In the light of the 'beginning,' the mother accepts and loves as a person the child she is carrying in her womb. This unique contact with the new human being developing within her gives rise to an attitude towards human beings—not only towards her own child, but every human being—which profoundly marks the woman's personality. It is commonly thought that *women* are more capable than men of paying attention *to another person*, and that motherhood develops this predisposition even more. The man—even with all his sharing in parenthood—always remains 'outside' the process of pregnancy and the baby's birth; in many ways he has to *learn* his own 'fatherhood' *from the mother*. (*Mulieris Dignitatem*, 18)

Quite often one hears the criticism of the pope's term "genius of women" in connection with accusations of alleged vagueness of the term. Well, it seems that this criticism is unjustified and may indicate too cursory reading of the papal texts. Like in the case of the previous quotation, hence also in the following one, the meaning of that term can be seen as located precisely in drawing attention to women's sense of the value of a person. This sensitivity understood as putting people at the center of other values could be named as the feminine humanism and the message would probably encounter a more favorable reception, but the essence of it was basically already the same when the pope wrote that "[...] our time in particular *awaits the manifestation* of that 'genius' which belongs to women, and which can ensure sensitivity for human beings in every circumstance: because they are human!" (*Mulieris Dignitatem*, 30). At the same time, the pope does not claim that man is deprived of this sensitivity or relieved of the responsibility for such an organization of the world that would suit the value of humans. The term only indicates the manifestations of sensitivity to the value of the human person which come both from nature and from women's experiences, while it calls both on women and men equally to develop their sensitivity in practice and to work together on such a shape of society which would be worthy of the human being. In the pope's view, women "[...] assume, together with men, *a common responsibility for the destiny of humanity* [...]"

(*Mulieris Dignitatem*, 31). One of the New Feminists, Marguerite Léna, writes as follows: "It is often thanks to the woman, who has sometimes been defined as 'being for others,' that the man becomes aware of this same vocation of 'being for others,' which he tries to forget in his striving for self-sufficiency."¹⁰ The author of these words does not radically separate or oppose the two ways of being human. On the contrary, Léna argues that man and woman have the same vocation, although the woman is more aware of it and she raises this awareness in man, which I guess is indeed well cast in the symbolism of the Book of Genesis, and which is often confirmed by the experience of women not only in family relationships but also in the public sphere. Another New Feminist, Helen M. Alvaré, links women's relationality with childbirth, which according to her can foster the development of a broader and deeper interpretation of human freedom: "As the members of the human race who bear the next generation, who have a special relationship with new life, we must never forget that all freedom is relational."¹¹ Precisely this characterization of freedom as relational is very important because it is absolutely necessary in modernity due to the fact that in times of thinking formed under the influence of William of Ockham and the later galaxy of political philosophers of the Enlightenment, freedom has been generally understood as the negative freedom, that is, as *freedom from*, not *freedom to*, or as the freedom to break out of the network of relationships and assigned roles with their social context, as an expression of independent, autonomous subject that is not determined by anything external to oneself.

It is not my intention to say that all modern thought stands on such grounds interpreting freedom, but I think that such position is more or less consistently dominant in modernity, including late modernity or postmodernity. That is why communitarians so strongly criticized this ideal, referring to the concept of freedom to act within the wider communities and with the sense of responsibility for them. But the strongest alternative to autonomously and individualistically understood freedom is love, and the most attractive argument is the one referring to practical and common experience. John Paul II expressed this vividly in his homily delivered on Jasna Góra during his first papal pilgrimage to Poland in 1979: "The fulfillment of freedom is love. The essence of love consists in belonging, and belonging means not to be free, or rather, to be free in a mature way. [...] This not-being-free in love never feels like slavery. Mother who is tied up with a sick child does not feel this as bondage but as the affirmation of her

¹⁰ Marguerite Léna, "A Creative Difference: Educating Women," in *Women in Christ. Toward a New Feminism*, ed. Michele M. Schumacher (Grand Rapids, MI: Eerdmans Publishing Company, 2004), 322.

¹¹ Helen M. Alvaré, "A New Feminism," accessed March 22, 2012, <http://mural.uv.es/nocermo/alvare.htm>. (originally published in *Liguorian*, May 1997).

freedom, as its fulfillment! Then she is the most free!”¹² Of course the pope did not underestimate the general sense of tremendous fatigue and limitations felt by women in terms of their sleep deprivation, physical and psychological effort, tense use of time, space, restricted possibilities of development outside the home, etc. However, he draws attention to the fact that, despite these experiences, and thanks to the visible consequences of her work with a new human person, a woman may see deeper and farther, and often feels in a deeper way, over and above the perspective of these *ad hoc* limitations, in the direction of *personal* effects of her activity. The mother then shows the way for the father and the rest of society about the fact that certain sacrifice of *freedom from*, which does not harm her dignity, brings the fulfillment of *freedom to*, that is, freedom to love.

A number of New Feminist statements confirm this position. An example may come from Elizabeth Fox-Genovese, who writes as follows: “As the bearers of life, women, including those who never bear a child, possess a special affinity for connection and, consequently, potentially embody a special gift for connection.”¹³ It is worth to pay attention to two issues, while considering this typical for New Feminists’ standpoint. First, nature is perceived here as a gift and a call for its full realization, rather than as full determination and limitation or enslavement, which can be an element of some theories of traditional feminism. Second, it is precisely this nature which contains the message that persons from their beginnings exist in relationships and develop, as well as realize themselves only through relationships. The modern concept of freedom, which in principle we “breathe” nowadays, because of its commonality in the public space of the Western societies, even if someone is far from the views of the mainstream, does not appreciate what is given from nature. Perhaps even more likely is the standpoint which treats nature as an object of contestation in order to win more area for freedom and self-determination. That is why the theses proposed by New Feminists, indeed somewhat classical and even banal, are in fact not banal at all in the context of the aforementioned universal understanding of freedom in modernity. In a sense, the New Feminism, starting this time not only with metaphysical theoretizing, but, above all, with the phenomenologically grasped experience of women, constitutes a real party contesting modernity and proposing its general rescue in the face of its deepening crises.

The origins of modernity are associated with the development of humanism, that is, with recognizing humans as subjects of the utmost importance and holders of gradually growing numbers of particular rights. At the same time, the

¹² John Paul II, Homilia wygłoszona w czasie Mszy świętej na Jasnej Górze, 4.06.1979, in *Musicie być mocni. I Pielgrzymka Jana Pawła II do Polski 2–10 czerwca 1979*. Warszawa: Polskie Radio, 2005. CD recording (Transl. A.G.).

¹³ Elizabeth Fox-Genovese, “Equality, Difference, and the Practical Problems of a New Feminism, in *Women in Christ*,” 307.

decay or even disappearance of strong relationships with a number of other factors allowed the emergence of totalitarian systems, which have depreciated humans totally. An important exemplary factor was the development of utilitarian philosophy whose extreme practical effects, directed against persons and whole ethnic or national groups, could have been observed in the death camps and the use of parts of human bodies as materials for the economy of the invading nations. Of course, humanistic thinking *per se* is not responsible for the crimes of totalitarian systems, but it is a huge paradox of modernity that such anti-human systems were created in theoretically arch-humanist times. The result of the shock of the Second World War was the establishment of international laws defending the human dignity, yet, some years later, the social reality brought new challenges, for example in the form of genetic experiments with which humanity is no longer careful enough to effectively defend the dignity of the person.

John Paul II, therefore, strongly emphasized the need for admission of the voice of women, whose sensitivity to the persons could prove to be valuable and even necessary in order to establish their protection. The New Feminists responded to the pope's call positively and that is why the feminism promoted by them represents the personalist kind of humanism and personalist feminism emerging from it, according to Sr. Prudence Allen.¹⁴ That is because they want to defend the human dignity not by utilitarian justification, as they claim that a person is a good in him/herself. In turn, Janne Haaland Matlary writes that a woman's point of view in the house, the family, politics, and professional work sets the proportions properly when it assigns the central place to the human person and when it focuses on the common with men concern for human welfare.¹⁵

However, to effectively articulate personal and social concern for others, one needs to be able to successfully go beyond one's focus on oneself, which is well known to people taking care of children, often but not only mothers and good teachers. It is also a well known mechanism by which the child must first receive love in order to love others in return, while various deficiencies of attention, care, and love require serious solutions in the future. Only a human convinced of one's worth and one's ability to be loved, is able to bestow respect and love on others. In other words, one is then free enough to be able to give. We can say that one fulfills one's freedom as the freedom from enclosure and freedom to go out of oneself.¹⁶ Michele M. Schumacher transfers it onto the ground of her feminist reflections and analyzes it in the context of liberation from sin which was given by Christ: "The authentically liberated woman is [...] one who

¹⁴ Sr. Prudence Allen, "Can Feminism Be a Humanism?," in *Women in Christ*, 251–84.

¹⁵ Janne Haaland Matlary, *Nowy feminizm. Kobieta i świat wartości*, trans. Małgorzata Rajczak (Poznań: W drodze, 2000).

¹⁶ Cf. the so-called law of ecstasy according to Karol Wojtyła, *Miłość i odpowiedzialność*, vol. I. Człowiek i Moralność, ed. Tadeusz Styczeń et al. (Lublin: TN KUL, 1982), 112.

experiences herself as eternally loved and forgiven, and thus as authentically free.”¹⁷ It is also worth to notice that because every human being is able to raise one’s awareness of God’s love and liberation, these words concerning women in principle apply to everyone. However, because it was women within feminism who focused on the question of liberation, the New Feminists are using this as an opportunity to raise awareness of men that they must also first receive love in order to become free enough to love. Towards God and other people, men, just like women, are above all receivers of others’ love and their debtors, and this fact obliges them to acknowledge these rich series of links and interpersonal bonds of love, as well as to express gratitude which should manifest itself also in deeds.

A similar argument of gratitude to the communities, starting from the family community, is a motive present also in the aforementioned communitarian theories, but it does not seem to be presented in such an attractive and concrete form as in New Feminist writings. In my opinion, it is crucial that women speak from the depths of their own experiences of maternity or at least from the depths of their potential maternity in the biological sense and quite often in a spiritual sense. Additionally, they do not hesitate to use the heavily loaded word “love,” so wrongly relegated to the realm of private intimate relationship by male philosophers of modernity, while in public they left as legitimate only individual rights and interests, as well as associational contracts. The New Feminists criticize the culture of individualism and openly praise the Catholic social teaching together with the John Paul II’s argumentation about women’s acute consciousness of human relatedness. What, in my opinion, makes the New Feminists’ position more attractive than the communitarians’ standpoint is a clear demonstration that loving someone, understood as desiring someone’s good recognized by sincere effort of looking for truth, and confirmed in deeds, is actually a necessary condition of self-fulfillment. Therefore, the proper self-love is not displaced here, but realized fully. Its deep character is simply shown to be connected with the love of others and the necessity of going out of oneself (literally, in *ecstasy*). One’s realization, therefore, requires resignation from oneself in order to love others; however, the side effect of this would actually and paradoxically produce finding oneself and one’s greatest good. This argumentation comes from the book by Mary Rousseau,¹⁸ though it is clear that her theory of love is a return to classical concept present in Thomistic anthropology. Love concerns wishing good for people (the others and oneself) recognized in the light of objectively existing standards rooted in truth and with the help of the subjective attitude of sincerity. Rousseau goes back to the traditional

¹⁷ Michele M. Schumacher, “An Introduction to a New Feminism,” in *Women in Christ*, xii.

¹⁸ Mary F. Rousseau, *Community. The Tie That Binds* (Lanham, MD: University Press of America, 1991). The arguments quoted by me henceforth come especially from the following pages: 24–25, 58, 71, 81, 85, 88, 90–93, 98–99, 102, 154, 156.

and premodern understanding of this problem, according to which the objective truth exists and is shared by all, and it is possible to discover it, while goods of particular persons is not ultimately contradictory. Thanks to this, by affirming one human being, we actually affirm all humanity, and we link ourselves with all people and the whole community of being.

The basis of such understanding of community is a common reference to the Truth, which is something that goes beyond the person, that is common to them and prior to their decision to love each other, and therefore independent of the will of individuals. Our subjective fidelity to this standard, namely sincerity to our own best beliefs about it, is the cornerstone of the community, because it is a reference to the external point which is common to us all. Nothing in our similarity, even the basic fact that we are all human beings, would not as effectively link us together, because we could always find serious differences next to similarities, as Rousseau claims. Only a factor transcending us, according to her, can successfully unite us without annihilating differences and make the community more profound. What is important, Rousseau does not say that people need to share the conviction of the existence of God in order to participate in such a strongly understood community (though she identified herself with the Catholic faith and teaching). In her opinion, one needs to believe in the existence of Truth as a common standard which, even if it is not equally perceived and interpreted by people, constantly motivates them to be sincere, that is, living in accordance with their beliefs and the best possible recognition of the truth about them and the world. Therefore one has to assume that the basis of community is not created by people but only sustained by their will. Community exists in the form of a bond with reality transcending persons. This bond creates communality, which is accepted as common by persons through love. A kind of humanism in Mary Rousseau's theory is not based on a vision of man as a sole author of his own world, but rather a co-author, who creates on the basis of what was priorly given to him. His greatness is not thereby diminished, because reception of a gift as a material for creative treatment is not considered with suspicion or depreciation.

Mary Rousseau's argumentation seems to me the most interesting New Feminist (though this name is not present in the book) analogy to the papal theology of the gift, that is, the theology presented by John Paul II, for whom the dominant motif explaining human existence in the world is the fact of being endowed by God. The New Feminists do not only recognize the strong vision of community as possible to implement, but even say that it basically already exists, while it requires our recognition and maintenance. What is more, a certain feminine specificity (but not contrasted radically with the masculine way of existence in the world, and only more clearly visible in women) links the possibility of full realization of community with the manifestation of the human need to open, recognize and embrace what comes from outside

of us in order to endow us. (By this 'something' we can understand truth and reality that we can not endlessly question without simultaneous questioning ourselves.)

The New Feminists do not question the natural differences between sexes and see their creative potential in complementarity. Neither do they oppose men and women on the psychological plane. Instead, they see the differences in the level of awareness of certain features needed by representatives of both sexes to develop their humanity. That is why this new kind of feminism may constitute the prospect of reconciliation between men and women within many areas often perceived as antagonistic, such as roles and spheres of life associated with the sexes. It also contains an attempt at reconciliation of individuals and society because it is a theologically inspired social response to the modern crisis of community and the deficit of affirmation of the values of reality, personal and social life, person, and relationships. By correcting or complementing the modern (and perhaps more masculine?) perspective of freedom as independence with the feminine (because deeply experienced by women) vision of freedom fulfilled through love, the New Feminism appears to be a significant and gravely needed current of social philosophy that is not trying to replace unilaterally interpreted freedom with an equally unilaterally interpreted bond and dependence. On the contrary, by presenting serious arguments about the fulfillment of freedom in the context of interpersonal relationships, it raises hopes that the so far neglected value of dependence will not become an addiction. Prudently, not sentimentally, it seeks to make social ties fertile and fruitful, rather than locking people in cages of underdevelopment, thoughtlessness, or just shallow and external being next to each other. The goal is to have such bonds which create real being together, not just next door, as well as to have bonds motivated by inner desire for the good of persons, not just by a sense of duty caused by external coercion. I presume it is not utopian, since despite the long reign of individualism, communities are still present even in Western societies. And I do not think this is an ungrounded vision, because so far the attitude of doubt in the reality of truth and community has not become more credible or better supported by logical arguments than the attitude of faith in what people received and do receive all the time as life to be fulfilled as a fruitful experience rather than an experiment of a demiurge or a random chance of fate.

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Aneta Gawkowska

Nouveau féminisme comme une réponse à la crise contemporaine de communauté

Résumé

L'article présente et analyse quelques questions choisies parmi celles qui sont les plus importantes et le plus souvent abordées par les représentantes du Nouveau Féminisme fondé sur l'anthropologie théologique de sexualité présentée par Jean-Paul II et sur sa théologie féministe. Le Nouveau Féminisme représente l'humanisme personnaliste au centre duquel se situe la valeur d'une personne qui se réalise en se sacrifiant aux autres. Les présuppositions sur l'égalité, la différence et la complémentarité des femmes et des hommes ainsi que sur une sensibilité singulière des femmes envers les questions relatives à la personne et aux relations sont la base des arguments théoriques et des revendications pratiques du Nouveau Féminisme. Cette optique — au sens plus profond — est aussi une réponse sociale inspirée théologiquement à la crise contemporaine de communauté et au déficit de l'affirmation des valeurs telles que la personne et les relations entre les gens. En corrigeant ou complétant la perspective moderne de la liberté et de l'indépendance à l'aide d'une vision qui permet de réaliser cette liberté grâce à l'amour, le Nouveau Féminisme apparaît comme un courant fort nécessaire de la philosophie sociale qui n'essaye pas de remplacer la notion de liberté interprétée d'une façon unilatérale par un lien ou une dépendance également interprétés unilatéralement, mais tente de concilier des valeurs complémentaires.

Mots clés : Nouveau Féminisme, personne, communauté, femme, homme, individualisme, modernité, liberté, amour

Aneta Gawkowska

Il nuovo femminismo come risposta alla moderna crisi della comunità

Sommario

L'articolo presenta e discute una serie di alcune fra le questioni più importanti sollevate dai rappresentanti del Nuovo Femminismo sulla base dell'antropologia teologica della sessualità esposta da Giovanni Paolo II di sessualità e della sua teologia della donna. Il Nuovo Femminismo è una posizione di un umanesimo personalistico al centro del quale si trova il valore della persona che si realizza nel dare se stesso agli altri. I presupposti sull'uguaglianza, sulla differenza e sulla complementarità tra uomini e donne, e sulle donne particolarmente sensibili a tematiche di persone e di relazioni, sono alla base di argomenti teorici e esigenze pratiche del Nuovo Femminismo. Questa posizione, in senso più profondo è la risposta sociale, di ispirazione teologica, alla crisi moderna della comunità e al deficit di affermazione di valori come quello della persona e delle relazioni interpersonali. Attraverso la correzione o integrazione di una prospettiva moderna di libertà e indipendenza, per soddisfare questa visione di libertà attraverso l'amore, il Nuovo Femminismo appare come una corrente che necessita molto di filosofia sociale, che non cerca di sostituire una libertà interpretata unilateralmente, come se fosse vincolata o dipendente, ma rappresenta un tentativo di riconciliazione dei valori complementari.

Parole chiave: Nuovo Femminismo, persona, comunità, donna, uomo, individualismo, modernità, libertà, amore

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Love as a Gift of Self: Call to Holiness in Christian Marriage in the Light of Eastern Monasticism

Abstract: Perhaps more than ever before, Christian spouses in the contemporary world encounter challenges and difficulties in living out their call to holiness. In the history of Christianity monasticism has always represented a model of a life according to the Gospel. Monastic life has been a living icon of holiness for all Christians in the world striving for perfection. This paper considers some characteristic aspects of the spiritual life of the monastic community and their possible application to the spiritual community life of Christian marriage. The two primary sources of this paper are the writings of St. Basil the Great and St. John Paul II. Beginning with a consideration of the call to holiness, the paper proceeds to explore some fundamental and characteristic values of the monastic *koinonia* and of the *communio personarum* of Christian marriage, which leads to a discussion of the inner discipline of love as a gift of self. The paper concludes by a short eschatological reflection.

Keywords: Christian marriage, holiness, *communio personarum*, monastic *koinonia*, love as a gift of self, St. Basil the Great, St. John Paul II

Introduction

“Is there a greater happiness than to imitate on earth the choir of angels?” writes St. Basil the Great in a letter to his friend St. Gregory Nazianzus.¹ In his *Ladder*

¹ St. Basil the Great, “Letter 2,” in *The Fathers Speak*, trans. Georges A. Barrois (New York: St. Vladimir’s Seminary Press, 1986), 49; *Patrologiae Cursus Completus. Series Graeca*, vol. 32, ed. Jacques-Paul Migne (Paris 1864), 72. Hereafter as PG.

of *Divine Ascent* St. John Climacus writes that “Angels are a light for monks, and the monastic life is a light for all men.”²

Monastic life is a life of imitation here on earth of the angelic life in Heaven. At the same time, monastic life is a model, a living icon, for all Christians in a world striving for perfection, and the spouses are not excluded from this call to imitate the “angelic” way of life. The question is: what is the mode of living out this “domestic monasticism”? In this paper I would like to consider some characteristic aspects of the spiritual life of the monastic community and their possible application to the spiritual community life of Christian marriage.

One would need to begin any consideration on monasticism by going first to the scriptural foundations in the Old and the New Testament, discussing the life of St. Prophet Elijah and St. John the Baptist and then proceed examining the lives of St. Anthony, the founder of the hermetic monasticism, and St. Pachomius, the founder of the coenobitic monasticism. But this would go beyond the scope of this resurge. Thus, I shall consider two primary sources in this paper, namely, St. Basil the Great, a legislator of Eastern Greek monasticism in Cappadocia Asia Minor, and St. John Paul II, a great saint, pope, and theologian in the end of 20th and beginning of 21st century.

Beginning with a consideration of the call to holiness, the paper will explore some fundamental and characteristic values of the monastic *koinonia* and of the *communio personarum* of Christian marriage. This will lead into a discussion of the inner discipline of love as a gift of self. The paper will conclude by a short eschatological reflection.

The Call to Holiness

Reading *The Longer Rules* and *The Shorter Rules* of St. Basil one could define monasticism simply as a life according to the Gospel. As he writes it in the beginning of *The Shorter Rules*, perfection consists in a sound faith and a life according to the Gospel of our Lord Jesus Christ.³ This life of faith and obedience to the call of the Gospel is aimed towards its ultimate Eschatological fulfillment which is described in the prologue of *The Longer Rules* as “a life of blessedness, equal citizenship with the saints and joy among the angels in the presence of

² St. John Climacus, *The Ladder of Divine Ascent*. Step 26 (Mahwah: Paulist Press 1982), 234; PG 88:339.

³ Cf. St. Basil the Great: *The Shorter Responses* (SR), prologue, in *The Asceticism of St Basil the Great*, ed. Anna Silvas (Oxford University Press, 2007), 272; PG 31:413. For comparative analysis of English translation of *The Shorter Rules* see also *The Ascetic Works of Saint Basil*, ed. Lowther Clarke (London, New York, Toronto: The Macmillan Co., 1925), 229–351.

Christ.⁴ Our Lord calls us all to His heavenly kingdom and the monks are those who respond to this call in a very “direct” and “radical” way. They live out their Baptismal grace in a most dynamic and powerful mode and take the Kingdom of God by violence—*biastetai* (Mt 11:12). The monks are the violent ones (*biastai*)⁵ of the Church, who by their “good works” bring the “light” before man and thus glorify the Father who is in heaven (Mt 5:16). This way of life is seen as a continuation of martyrdom of the first Christians, who, with a burning love for God in their hearts, witnessed their faith in Jesus Christ and, putting their hope in the Lord, offered themselves as a pure and sincere gift to God.

St. Paul teaches “God’s love has been poured into our hearts through the Holy Spirit which has been given to us (Rom 5:5). The love of God (*Agape tou Theou*) is granted to man by God, but not only as the created charity, but the uncreated Charity, that is, the Holy Spirit himself indwells in the soul of the just. St. Basil teaches that the Holy Spirit, the origin of our sanctification, indwells in a purified soul.⁶ It is through the Holy Spirit, as St. Basil explains, that the “hearts are lifted up [...] and those who progress are brought to perfection.”⁷ By the grace of the Holy Spirit man is able to participate in the life of the Triune God and be deified.⁸

The heart of Christian holiness and of monastic life is the perfection of charity. It is no wonder that St. Basil dedicates the first three chapters of his *Longer Rules* to this fundamental question of monastic perfection. According to St. Basil man is created with a tendency to love.⁹ “It is germinated in the school of God’s commandments, where it is carefully cultivated, skillfully nurtured, and so, by God’s grace, brought to maturity [perfection].”¹⁰ This virtue (*katorthoma*),¹¹ as St. Basil explains, “effects and comprehends in itself every commandment,” for whoever loves Christ, keeps His commandments (Jn 14:15).¹² As the saint as-

⁴ St. Basil the Great: *The Longer Responses* (LR), prologue, in *The Asceticon*, 158; PG 31:330. For comparative analysis of English translation of *The Longer Rules* see also *The Ascetic Works of Saint Basil*, ed. Lowther Clarke (London, New York, Toronto: The Macmillan Co. 1925), 145–228.

⁵ Cf. Geoffrey William H. Lampe: *A Patristic Greek Lexicon* (Oxford: Clarendon Press 1961), 296.

⁶ Cf. St. Basil the Great, *On the Holy Spirit*. Chap. 9:23 (Crestwood: St. Vladimir’s Seminary Press, 1980), 44; PG 32:20.

⁷ Ibid.

⁸ Cf. St. John Paul II, Apostolic Letter *Oriente Lumen*, accessed 30.07.201, http://w2.vatican.va/content/john-paul-ii/en/apost_letters/1995/documents/hf_jp-ii_apl_19950502_orientale-lumen.html, no. 6. Here St. John Paul II explains that the theology of deification (*theosis*) “remains one of the achievements particularly dear to Eastern Christian thought.”

⁹ Cf. St. Basil the Great, LR 2; SR 174, 212; PG 31:336–340, 473, 486.

¹⁰ St. Basil the Great, LR 2, in *The Asceticon*, 162; PG 31:336–340.

¹¹ Cf. PG 31:336; *Katorthoma* means action rightly done, a moral act achieved—very prominent in St. Basil’s vocabulary; see footnote 42 in *The Asceticon*, 163.

¹² St. Basil the Great, LR 2, in *The Asceticon*, 163; PG 31:336.

serts, we have already received from God “the capacities (*dynameis*) for all the commandments” that the Lord has given us.¹³

According to St. Basil love towards God (*Theon agapes*) cannot be learned from outside.¹⁴ One has to learn it, by the grace of the Holy Spirit, from within, by living a virtuous life in accomplishing the commandments.¹⁵ Virtue, as defined by St. Basil, is the proper use of the movements of the soul implanted in us by God, that is, “with a good conscience, in accordance with the Lord’s commandments.”¹⁶ The alternative is to turn towards vice, which is an evil use of the movements of the soul, that is, contrary to the commandments.¹⁷

In his Apostolic Exhortation *Familiaris Consortio* St. John Paul II writes that “God inscribed in the humanity of man and woman the vocation, and thus the capacity and responsibility, of love [...]. Love is therefore the fundamental and innate vocation of every human being.”¹⁸ These words of St. John Paul II seem to correspond to St. Basil’s idea on love discussed above. Monasticism and marriage are two specific states of Christian life. Thus, one should not make direct connections between the monastic spirituality and that of marriage and family. Nevertheless, men and women in both states are called to grow in holiness, which consists in the perfection of charity. In the Dogmatic Constitution of the Second Vatican Council *Lumen Gentium* we read that “all the faithful of Christ of whatever rank or status, are called to the fullness of the Christian life and to the perfection of charity.”¹⁹ As St. John Paul II writes in *Familiaris Consortio*, “Christian revelation recognizes two specific ways of realizing the vocation of the human person, in its entirety, to love: *marriage and virginity or celibacy*. Either one is in its proper form an actuation of the most profound truth of man, of his being created in the image of God.”²⁰ By divine grace human natural love, being flawed by sin, is healed and raised to a supernatural dimension—to charity—and man is called to love God and his neighbor (Mt 22:37–39) in a supernatural and holy way. This call to perfect charity is the same call for both, the monks and the married couples, but the way they live it out is, nevertheless, different.

¹³ Ibid.

¹⁴ Cf. *ibid.*

¹⁵ Cf. *ibid.*

¹⁶ *Ibid.*, 164; PG 31:337.

¹⁷ Cf. *ibid.*, 163–64; PG 31:336–37.

¹⁸ St. John Paul II, Apostolic Exhortation *Familiaris Consortio*. November 22, 1981, in Apostolic Exhortation *Familiaris Consortio* of Pope John Paul II (Boston: Pauline Books and Media 1981), no. 11.

¹⁹ Vatican Council II, Dogmatic Constitution on the Church *Lumen Gentium*. November 21, 1964, in *The Conciliar and Post Conciliar Documents* (Dublin: Dominican Publications, 1996), no. 40.

²⁰ St. John Paul II, *Familiaris Consortio*, no. 11.

The Monastic *Koinonia*

As St. John Paul II explains, God inscribed in man the capacity and the vocation not only of love but also of communion.²¹ Speaking of monastic life St. Basil emphasizes important anthropological and social aspects in the third chapter of *Longer Rules*, namely, that man is “a domesticated (*emeron*) and sociable (*koinonikon*) animal” and not “a solitary (*monastikon*) and wild (*agrion*) one.”²² As he writes: “Nothing is more characteristic of our nature, that we have fellowship with one another, need one another and love our own kind.”²³ The monastic community, the monastic *koinonia*, is the school of authentic love—a love lived out and perfected in communion.

Considering the manner of life together St. Basil uses the example of the human body and compares the harmonious work of its members to that of the members of a monastic community.²⁴ The principle of a harmonious life and activity lies in the proper way of doing things. St. Basil writes: “Since the Apostle says: ‘Let all things be done decently and in order (1 Cor 14:40),’ we consider that when believers are joined together there will be a decent and well-ordered way of life in which the principle of the members of the body is observed (1 Cor 12:27).”²⁵ In the seventh chapter of his *Longer Rules* St. Basil explains the reasons for preferring community life for the monks. Here I shall present some of them which are relevant to the topic of this paper.

The first very practical reason for living in *koinonia* consists in the fact that we need one another for providing the necessities of life, simply with regard to bodily needs.²⁶ Here St. Basil uses the image of a human body explaining that one foot, surely having use of its own powers, is in need of other foot and other members of the body in order to fulfill its own activity and be sufficient to endure. So it is with the life in community, “because God the Creator ordained that we have need of each other, as it is written, so that we associate with one another (Gn 2:18; Sir 13:16; 1 Cor 12:25).”²⁷

“In addition to this,” writes St. Basil, “the very character of Christ’s love, does not permit an individual to seek his own interests, for Love, says the Apostle, seeks not its own (1 Cor 13:4).”²⁸ Referring to St. Paul, he emphasizes that a monk should seek not his own advantage but that of the many, so that they

²¹ Cf. *ibid.*

²² St. Basil the Great, LR 3, in *The Asceticon*, 172; PG 31:340.

²³ *Ibid.*

²⁴ Cf. St. Basil the Great, LR 24, in *The Asceticon*, 224–25; PG 31:369.

²⁵ *Ibid.*, 225.

²⁶ Cf. St. Basil the Great, LR 7, in *The Asceticon*, 181; PG 31:345–248.

²⁷ *Ibid.*

²⁸ *Ibid.*

might be saved (1 Cor 10:33).²⁹ The life of a monk in *koinonia* is aimed at perfection of charity by seeking the good of the others and contributing to their salvation.

Furthermore, as St. Basil explains, “the individual does not easily recognize his own faults and vices if he has no one to reprove him and set him right with gentleness and compassion.”³⁰ Mutual correction in the life of community effects the personal development and formation of an individual character and helps in the process of purification from vices and growing in virtue.

St. Basil continues by saying that “the many commandments are more easily fulfilled by many living together, but not at all by one alone, for in fulfilling one commandment, another is hindered.”³¹ If the life of the monastic community is well ordered then the fulfillment of the commandments of Christ is more effective and dynamic, since more are involved at the same time in doing “good works” (Mt 5:16).

“Moreover,” writes St. Basil, “if all of us have been gathered up in the one hope to which we were called (Eph 4:4), then we are one body having Christ as head and we are each members of the other (Rom 12:5).”³² St. Basil emphasizes here “serving the common good in that dispensation which accords with God’s good pleasure,” and the preservation of the harmonious “relation and service of the members towards each other,” as well as the aspect of the subjection to Christ in the community life.³³

Furthermore, as St. Basil articulates, “no one is sufficient of himself to receive all the spiritual charisms. Instead, the supply of the Spirit is given according to the proportion of each one’s faith (Rom 12:6), such that, in communion of life the individual charism becomes the common possession of fellow-citizens (Eph 2:19).”³⁴ Thus, in a monastic community life the activity of the Holy Spirit in one monk passes over to all alike—“when the many live together, each enjoys his own gift, even as he multiplies it by sharing it with others, and reaps the fruit of others’ gifts, as if they were his own.”³⁵ St. Basil also emphasizes the importance of common prayer by those “praying together with one mind and heart, with the result that from many persons, through the grace which is in [them], thanks are rendered to God.”³⁶

²⁹ Cf. *ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*, 182.

³² *Ibid.*

³³ *Ibid.*, 182–83.

³⁴ *Ibid.*, 183–84.

³⁵ *Ibid.*

³⁶ *Ibid.*, 184. Besides the above-mentioned reasons, the life in monastic *koinonia* has many other advantages, as described by St. Basil. I shall not discuss all the reasons here but only those that closely relate to the topic of this paper.

A monk is called to perfect his charity for God and neighbor through a life of virtues by fulfilling the commandments. So doing, he serves the common good of the body of the monastic community, as well as of the whole Body of Christ, the Church, in a way that is pleasing to the Lord. This is realized in a life of a loving mutual relationship by serving one another in subjection to Christ through the monastic obedience, thus fostering the harmony of the community life. Even the spiritual gifts are shared between the monks living in *koinonia*.³⁷ In such a way each member of the community can enjoy his own gift, even as he multiplies it by sharing it with others, and he can reap the fruit of others' gifts, as if they were his own.³⁸

The *Communio Personarum* of Christian Marriage

Christian spouses are called to holiness in their domestic community. Thus, first I shall define what I mean by this community. In his Letter to Families, St. John Paul II writes that the family “is in fact a community of persons whose proper way of existing and living together is communion: *communio personarum*.”³⁹ As St. John Paul II explains it “only persons are capable of living ‘in communion.’” Now, as the Fathers of the Second Vatican Council teach, “the family originates in a marital communion as a ‘covenant,’ in which man and woman ‘give themselves to each other and accept each other.’”⁴⁰ It is in this context of the “covenant” of marriage that Christ confirms and makes it clear to all that the basis of the common good of the family is the indissoluble character of marriage.⁴¹

The words of the marriage consent that the couple pronounces during the celebration of the sacrament of matrimony define and express what is essential to the common good of the spouses and they indicate what ought to be the common good of the future family: love, fidelity, honor, the permanence of their union until death.⁴²

³⁷ Cf. St. Basil the Great, LR 7, in *The Asceticon*, 183–84; PG 31:346. For English translation of LR 7 see also *The Ascetic Works of Saint Basil*, ed. Lowther Clarke, 164–65.

³⁸ Cf. *ibid.*

³⁹ Cf. John Paul II, Letter to Families *Gratissimam Sane*. February 2, 1994, in Letter to Families from Pope John Paul II (Rome: Vatican Press, 1994), no. 7.

⁴⁰ *Ibid.*

⁴¹ Cf. *ibid.* “If the Master confirms it ‘now,’ he does so in order to make clear and unmistakable to all, at the dawn of the New Covenant, the indissoluble character of marriage as the basis of the common good of the family.”

⁴² Cf. John Paul II, Letter to Families, no. 10.

Speaking of common good in marriage one cannot avoid mentioning the teaching of St. Augustine on the three goods of marriage—a first systematic theological work on marriage whose influence on later Christian thought has been immense.⁴³ “The good of marriage among all nations and peoples,” writes St. Augustine “lies in the purpose of procreation and in the faithful preservation of chastity. But for the people of God the good of marriage lies also in the holiness of the sacramental bond.”⁴⁴ This scheme of the three goods—the good of children, the good of fidelity, and the good of sacramentality—being elaborated by Pope Pius XI in his Encyclical Letter *Casti Connubii*, had shown itself to be very appropriate for the dynamics of Christian action, where the divine promises, the goods, encompass and lay the foundation for the precepts.⁴⁵ The ends of marriage established by God are, precisely, the goods promised by him, and he has established his laws in their service, as the active intimate principle and external guide for the successful attainment of those very ends. The goods of marriage are the basis for a good and holy Christian marriage and family life.⁴⁶

As St. John Paul II writes in his Letter to Families, the good of both spouses, which is at the same time the good of each of the spouse, “must then become the good of the children. The common good, by its very nature, both unites individual persons and ensures the true good of each.”⁴⁷ St. John Paul writes that the common good of the family is realized in the newborn child.⁴⁸ “Just as the common good of spouses is fulfilled in conjugal love, ever ready to give and receive new life, so too the common good of the family is fulfilled through that same spousal love, as embodied in the newborn child.”⁴⁹ The good of children and their education “is profoundly linked to marital consent, with its solemn promise of love, conjugal respect, and fidelity until death.”⁵⁰

As St. John Paul II articulates, “love causes man to find fulfillment through the sincere gift of self. To love means to give and to receive something which can be neither bought nor sold, but only given freely and mutually.”⁵¹ In his *Familiaris Consortio* St. John Paul II emphasizes that the spouses are called to love each other in their unified totality, namely, in their bodily and spiritual

⁴³ Cf. David Hunter, *Marriage in the Early Church* (Minneapolis: Fortress Press, 1992), 22.

⁴⁴ St. Augustine, *The Good of Marriage*, no. 32, in David Hunter, *Marriage in the Early Church*, 120, *Patrologiae Cursus Completus. Series Latina*, vol. 40. Paris (1845): 394.

⁴⁵ Cf. Ramon Garcia de Haro, *Marriage and the Family in the Documents of the Magisterium* (San Francisco: Ignatius Press 1993), 118–19.

⁴⁶ Cf. Yosyp Veresh, *The Anthropological Foundations of Spirituality of Marriage in the Christian East* (Uzhhorod: Lira Publishing Company, 2010), 126.

⁴⁷ John Paul II, Letter to Families, no. 10.

⁴⁸ Cf. *ibid.*, no. 11.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*, no. 10.

⁵¹ *Ibid.*, no. 11.

dimensions.⁵² “Love includes the human body, and the body is made a sharer in spiritual love.”⁵³ In their conjugal life the spouses, “while giving themselves to one another, give not just themselves but also the reality of children, who are a living reflection of their love.”⁵⁴ They are “no longer two, but one flesh (Mt 19:6)” and they are called “to grow continually in their communion through day-to-day fidelity to their marriage promise of total mutual self-giving.”⁵⁵ Conjugal love is realized “in a truly human way only if it is an integral part of the love by which a man and a woman commit themselves totally to one another until death [...]. If the person were to withhold something or reserve the possibility of deciding otherwise in the future, by this very fact he or she would not be giving totally.”⁵⁶

The Gospel reveals the truth concerning the gift of self as being rooted “in the gift of God, Creator and Redeemer, and in the ‘grace of the Holy Spirit,’” which is poured out on the spouses during the celebration of the sacrament of marriage, writes St. John Paul II in his Letter to Families.⁵⁷ Without such an “outpouring” of grace, the spouses cannot live out their vocation of love and communion as a gift of self. They are called to realize that they have been redeemed at “great cost, by the price of the most sincere gift of all, the blood of Christ of which they partake through the sacrament. The liturgical crowning of the marriage rite is the Eucharist, the sacrifice of that ‘Body which has been given up’ and that ‘Blood which has been shed,’ which, in a certain way, finds expression in the consent of the spouses.”⁵⁸

As Christian spouses, the husband and the wife, by the grace of the Holy Spirit, are called to live out their mutual love and their life of communion in a supernatural way. They are thus called to grow in holiness by living out their married and conjugal love according to its true nature, by helping and assisting each other in their everyday practical life, by seeking the good of the other, both temporal and spiritual, by loving correction in the spirit of humility and service, by living a life of virtues and thus contributing to the harmony and common good of the community of their “one flesh” (Gn 2:24), by exchanging also the spiritual gifts they have, and by glorifying God through their common prayer that is rooted in the prayer of the Church and its sacramental life. All the above and many other characteristic values of the monastic spirituality could be applied for the spiritual benefit of Christian spouses and families by analogy. The life of domestic *koinonia* should resemble that of the monastic one by ordering

⁵² Cf. *ibid.*

⁵³ John Paul II, Letter to Families, no. 11.

⁵⁴ *Ibid.*, no. 14.

⁵⁵ *Ibid.*, no. 19.

⁵⁶ *Ibid.*, no. 11.

⁵⁷ John Paul II, Letter to Families, no. 11.

⁵⁸ *Ibid.*

and sanctifying their time and their life. Here too the rules of St. Basil could become the source of inspiration, for example, for scheduling common prayer of the day, for the proper mode of receiving guests, for the charitable works towards those who are in need and for serving the common good of the whole Church.

We shall not go here into a detailed discussion of various practical and pastoral aspects of spiritual life of marriage and family. This paper attempts to show that there does exist a certain similarity between the spiritual life of monastic community and that of the community life of Christian marriage; namely, in both states there is a call to perfection of charity—as a gift of oneself in a supernatural dimension—and this call to a self-giving love is realized in the context of living in *koinonia* (communion) and serving the common good. The call to holiness is the same for both states, but the mode of the realization is, nevertheless, different.⁵⁹

The Inner Discipline of Love

What is the measure of love for God? St. Basil answers this question in the following way: “To be ever stretching the soul beyond its strength towards the will of God, having his glory as its goal and desire.”⁶⁰ This idea of straining forward or stretching beyond (*epektasis*)⁶¹ in the spiritual life is taken from St. Paul (Phil. 3:13) and is quite popular among some Eastern Fathers. However, it requires an inner discipline or self-control that orders properly and harmoniously the powers in man. The term used by St. Basil for self-control is *engkrateia*,⁶² which could be literary translated as ‘self-governance’ or ‘self-discipline.’ St. Paul lists it as one among the fruits of the Holy Spirit (Gal 5:23). In the monastic spiritual tradition, the ascetic is called, by the grace of the Holy Spirit and his virtuous life, to live out self-control in a very dynamic way by

⁵⁹ One shall recall here the teaching of the Catholic Church about the excellence of virginity and of celibacy and of their superiority over the married state as it was revealed by Christ, taught by St. Paul, explained in the same way by all the holy Fathers and Doctors of the Church, and was solemnly defined as a dogma of divine faith by the holy council of Trent [Sess. XXIV, can 10.]. See Pope Pius XII, Encyclical on Consecrated Virginity *Sacra Virginitas*, no. 32. May 25, 1954, accessed July 31, 2015, http://w2.vatican.va/content/pius-xii/en/encyclicals/documents/hf_p-xii_enc_25031954_sacra-virginitas.html.

⁶⁰ St. Basil the Great, SR 211, in *The Asceticism*, 389; PG 31:486.

⁶¹ Cf. Lampe, *A Patristic Greek Lexicon*, 513.

⁶² Cf. St. Basil the Great, LR 16; PG 31:358–59; See also Lampe: *A Patristic Greek Lexicon*, 775–76.

bringing under a harmonious rule all the aspects of his being and thus giving himself completely and wholly to God.

St. Basil teaches that self-control is necessary for the fulfillment of all the commandments.⁶³ Thus, it is necessary for perfecting love, since according to St. Basil, progress in love towards God (*Theon agapes*) is to fulfill the commandments.⁶⁴ The life of *engkrateia* enables a person to live out his love in a very dynamic way.

It is through self-control that the rigorous treatment of the body, and its being brought into subjection (1 Cor 9:27) is accomplished.⁶⁵ Self-control brings about peace and harmony in man. Training in self-control “extends to abstinence from everything that harms us, by which we may be gratified but are also wounded in soul.”⁶⁶ Abstinence that is necessary for those training themselves to piety—is an “abstinence from all that those who live according to passion crave to enjoy.”⁶⁷ St. Basil writes, “Self-control declares one who has died with Christ (Col. 2:20; 2 Tim. 2:11) and mortified his members that are upon the earth (Col. 3:5). We know that it is the mother of temperance, the sponsor of health, the effective remover of obstacles to bearing fruit in Christ through good works (Eph. 2:10).”⁶⁸

The term used by St. Basil for temperance is *sophrosyne*, which signifies moderation and chastity coupled with other virtues.⁶⁹ It is understood in Eastern spiritual tradition as purity or chastity not only in its narrow sense but rather as a kind of integrity of a person in his dedication to Christ. We find a similar idea on chastity in the Catechism of the Catholic Church that defines the virtue of chastity as involving the integrity of the person and the integrity of the gift: “Chastity means the successful integration of sexuality within the person and thus the inner unity of man in his bodily and spiritual dimension.”⁷⁰

In this context, a monk lives out the integrity of his person, by the grace of the Holy Spirit, as a gift of self to Christ through a life of self-control (*engkrateia*) lived out in virginity—in perfect chastity. Thus, “ever stretching

⁶³ Cf. St. Basil the Great, LR 16, in *The Asceticon*, 207–208; PG 31:358–59.

⁶⁴ Cf. *Ibid.*, 163; PG 31:336.

⁶⁵ Cf. *Ibid.*, 205; PG 31:358–59.

⁶⁶ *Ibid.*, 207; PG 31:359.

⁶⁷ *Ibid.*

⁶⁸ St. Basil the Great, LR 18, 212; PG 31:361–62.

⁶⁹ St. Basil the Great, LR 18; PG 31:362. Cf. Lampe, *A Patristic Greek Lexicon*, 1370. In the Church Slavonic languages the word used for purity or chastity is *Cilomodrije*; see *Polnij Cerkovno-Slovyanskij Slovary (A Complete Church-Slavonic Dictionary)* (Moskva: Otchij Dom, 2001), 806.

⁷⁰ *Catechism of the Catholic Church* (Vaticano: Libreria Editrice Vaticana, 1997), no. 2337.

(*epekteinesthai*) the soul beyond its strength towards the will of God,”⁷¹ the monk lives out his direct and dynamic love to his Lord.⁷²

St. John Paul II in his Letter to Families writes about an interior discipline of the gift: “The person realizes himself by the exercise of freedom in truth. Freedom cannot be understood as a license to do absolutely anything: it means a gift of self. Even more: it means an interior discipline of the gift [...]. All this is made real in the ‘communion of persons.’”⁷³ Love, as a free gift of self in truth, requires an interior discipline. This may be sometimes very demanding. Love is demanding, as St. John Paul II explains it: “But this is precisely the source of its beauty: by the very fact that it is demanding, it builds up the true good of man and allows it to radiate to others [...]. Love is true when it creates the good of persons and of communities; it creates that good and gives it to others.”⁷⁴

The practice of self-control helps Christian spouses to live their conjugal life according to the true nature of marriage and human sexuality by living in “conjugal chastity.”⁷⁵ In the Pastoral Constitution of the Second Vatican Council *Gaudium et Spes* we read: “By their very nature, the institution of matrimony itself and conjugal love are ordained for the procreation and education of children, and find in them their ultimate crown.”⁷⁶ The document also explains that through an intimate union of their persons and of their actions the spouses render mutual help and service to each other and they experience the meaning of their oneness and attain to it with growing perfection day by day.⁷⁷ The intimate union of the spouses and the good of the children are ultimately rooted in the authentic life of chastity in marriage.

Chastity, which is “the successful integration of sexuality within the person,”⁷⁸ comes from the integrity of the powers, those powers (*dynameon*) which, as St. Basil teaches in his rules, “are implanted in us from the beginning like seeds.”⁷⁹ Life of self-control (*engkrateia*) disciplines each spouse and orders his and her emotions, feelings, and desires in a proper and harmonious way. To grow in their interior discipline of the gift the spouses are advised

⁷¹ St. Basil the Great, SR 211, in *The Asceticon*, 389; PG 31:486.

⁷² Normally one would discuss monastic chastity together with the two other monastic vows, namely, obedience and poverty, called the evangelical counsels. The perfection of charity in a monastic life in a very special way appears in the practice of these counsels. In his rules, St. Basil does not treat them separately as three evangelical counsels, but considers them in a broader context of the call of the Gospel to perfection in charity. I shall not consider each of these three counsels here but will focus on chastity only.

⁷³ John Paul II, Letter to Families, no. 14.

⁷⁴ Ibid.

⁷⁵ *Catechism of the Catholic Church*, no. 2345.

⁷⁶ *Gaudium et Spes*, no. 48.

⁷⁷ Cf., *ibid.*

⁷⁸ *Catechism of the Catholic Church*, no. 2337.

⁷⁹ Cf. St. Basil the Great, LR 3, in *The Asceticon*, 172; PG 31:340–41.

by St. Paul and encouraged by the Christian experience to practice temporal abstinence from conjugal life, for a certain period of time, by mutual agreement and for the sake of deepening their devotion in prayer to God (1 Cor 7:5). This practice of self-control, by the grace of the Holy Spirit, will help them to grow in temperance (*sophrosyne*) and thus to exercise their gift of self in their conjugal life according to the truth of the Gospel. Following the counsel of St. Paul, they will learn in their bodily and spiritual dimensions how to act as free human persons in their prayerful dedication to God, how to grow in mutual respect and how to build up a proper way of living together as a *communio personarum*. So, what is the measure of love for God in the life of Christian spouses living in conjugal chastity? In the words of St. Basil, we could say: "To be ever stretching the soul beyond its strength towards the will of God, having his glory as its goal and desire."⁸⁰

Conclusion

I shall conclude with a short eschatological consideration. In the first prayer of the Great and Angelic Monastic Schema, in the Byzantine tradition, the following is read:

Rejoice therefore with joy and exult with exultation, for today the Lord God has selected you and set you apart from life in the world, and has set you, as before his face, in the post of the Monastic order, in the service of the angelic life, in the height of the life which imitates Heaven, to worship him angelically, to serve him wholly and completely, to seek those things which are above. 'For our way of life,' according to the Apostle, 'is in the Heavens.'⁸¹

Monastic life is a participation already here on earth, in a certain way, in the angelic life in Heaven. It is the realization of the eschatological dimension of Christianity. The monk, being set apart from the world, through his angelic worship and service, lives out his direct and dynamic mode of love to his Lord. In a special way, he points to the eschatological reality by his monastic chastity. Our Lord Jesus Christ affirms that at the final resurrection man and woman "neither marry nor are given in marriage, but are like angels in heaven" (Mt 22:30). The state of the resurrected man shall be a perfect state of integrity

⁸⁰ St. Basil the Great, SR 211, in *The Asceticon*, 389; PG 31:486.

⁸¹ *Rubrics and Service of the Great and Angelic Monastic Schema*, accessed October 2, 2014, <http://orthodoxmonk.blogspot.co.at/2007/05/rubrics-and-service-of-great-and.html>.

of the human person, not destroying human sexuality, but bringing it to perfection in a mode of virginity.⁸²

How do we understand this? In his General Audiences on the Theology of the Body St. John Paul II writes that the final resurrection from the death “will consist in the perfect participation of all that is physical in man in what is spiritual in him.”⁸³ At the same time, resurrection “will consist in the perfect realization of what is personal in man.”⁸⁴ Thanks to the love of a perfect union, the eschatological communion of man with God “will be nourished by the vision, face to face, of contemplation of that more perfect communion—because it is purely divine—which is the Trinitarian communion of the divine persons in the unity of the same divinity.”⁸⁵ The just will have the “eschatological experience of the living God [that will reveal] in a deep and experiential way, the self-communication of God to the whole creation and, in particular, to man.”⁸⁶ And the worthy response of the resurrected man, while keeping masculinity and femininity, to that self-communication of God, will be a perfect personal gift of self in the state of virginity. St. John Paul II writes,

In this mutual gift of himself by man, a gift which will become completely and definitively beatifying, as a response worthy of a personal subject to God’s gift of himself, virginity, or rather the virginal state of the body, will be totally manifested as the eschatological fulfillment of the nuptial meaning of the body, as the specific sign and the authentic expression of all personal subjectivity.⁸⁷

To those who live out their Christian perfection in marriage St. Paul counsels to practice a temporal abstinence from conjugal life for a certain period of time, by mutual agreement and for the sake of deeper devotion to prayer (1 Cor 7:5). In so doing, the spouses will not only increase their charity to God and to each other, but, in a certain way, they will realize, though in a less perfect mode, the ideal of Christian chastity lived out in monastic state, pointing thus to the “eschatological fulfillment of the nuptial meaning of the body.”⁸⁸ Perhaps in our times of strong secularization and liberalization, there is a need to re-emphasize the importance of continence in the spiritual life of Christian spouses. We believe that it is this eschatological reality that should inspire those who work in

⁸² Cf. Yosyp Veresh, *The Anthropological Foundations of Spirituality of Marriage in the Christian East*, 294–95.

⁸³ John Paul II, *The Theology of the Body* (Boston: Pauline Books and Media, 1997), 241.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*, 243.

⁸⁶ *Ibid.*, 241.

⁸⁷ *Ibid.*, 244.

⁸⁸ *Ibid.*

the pastoral care for marriage and family to look for authentic means of support for Christian spouses and their families in their call to holiness.

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Yosyp Veresh

L'amour en tant que don de soi-même :
Vocation à sainteté dans le mariage chrétien à la lumière
du monachisme de l'est

Résumé

Dans le monde contemporain, probablement à un degré plus haut que jamais auparavant, les époux chrétiens rencontrent des défis et difficultés concernant la réalisation de la vocation à vivre dans la sainteté. Dans l'histoire du christianisme, le monachisme constituait toujours un modèle de vie conforme à l'Évangile. La vie monastique constituait une icône vivante de la sainteté pour tous les chrétiens au monde qui se dirigeaient vers la sainteté. Le présent article analyse quelques aspects caractéristiques de la vie religieuse des moines et leur application éventuelle dans l'existence d'une communauté religieuse qu'est le mariage chrétien. Les textes du Saint Basile le Grand et du Saint Jean-Paul II sont deux sources essentielles de cet article. En commençant par les réflexions sur la vocation à la sainteté, l'article passe à l'analyse de quelques principales et typiques valeurs monastiques *koinonia* et *communio personarum* du mariage chrétien, ce qui conduit par suite à une discussion sur la discipline intérieure de l'amour en tant que don de soi-même. L'article finit par une courte réflexion eschatologique.

Mots clés : mariage chrétien, sainteté, *communio personarum*, *koinonia* monastique, amour en tant que don de soi-même, St. Basile le Grand, St. Jean-Paul II

Yosyp Veresh

L'amore come dono di sé:
Vocazione alla santità nel matrimonio cristiano alla luce
del monachesimo orientale

Sommario

Nel mondo moderno, forse in misura maggiore rispetto al passato, i cristiani sposati devono affrontare sfide e difficoltà nella loro vocazione a una vita di santità. Nella storia del cristianesimo, il monachesimo è sempre stato un modello di vita secondo il Vangelo.

La vita religiosa è stata un'icona vivente della santità per tutti i cristiani del mondo che aspirino all'eccellenza. Il presente articolo prende in esame alcuni aspetti specifici della vita spirituale dei monaci e la loro possibile applicazione nella vita spirituale della comunità, che è il matrimonio cristiano. Le due fonti fondamentali di questo articolo sono gli scritti di San Basilio Magno e San Giovanni Paolo II. A partire dalle riflessioni sulla vocazione alla santità, l'articolo passa ad esaminare alcuni dei valori fondamentali e caratteristici della *koinonia* monastica e della *communio personarum* del matrimonio cristiano, per poi passare a un dibattito sulla disciplina interna dell'amore come dono di sé. L'articolo si conclude con una breve riflessione escatologica.

Parole chiave: matrimonio cristiano, santità, *communio personarum*, *koinonia* monastica, amore come dono di sé, San Basilio Magno, San Giovanni Paolo II

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Moral Issues of Advance Directives

Abstract: The letter *Gratissimam Sane* stresses that contemporary civilization based on utilitarianism treats people like “objects” and not like “persons.” The civilization of use potentially can affect family life. In this context, the paper considers the problem of advance directives. The first part the article offers a historical outline of advance directives which are related to the euthanasia movement and controversial legal battles over patients who lost their capacity to decide. The main reasons for having a living will or health care proxy follow. The second part of the article describes the clinical case of Mr. A., which illustrates the problems regarding the application and interpretation of advance directives. The last part presents a discussion of the case. It focuses on the dignity and autonomy of patient and physician and limits of the proxy decisions.

Keywords: advance directives, euthanasia, health care proxy, autonomy, human dignity

The history of the 20th and 21st centuries is in a major part a great history of human progress. This phenomenon can be observed in the growing capacities of humanity in the area of health care. New drugs and medical procedures allow extending the span of human life. Respirator, artificial hydration, and nutrition, as well as transplant procedures can help in saving life in situations hitherto considered as hopeless. At the same time, all these technical signs of progress can be used in unethical way, subjecting a person to unnecessary suffering. Another dimension of progress is related to the human rights movement and the sense of personal autonomy, which began with the promulgation and adoption of the Universal Declaration of Human Rights in 1948 by the United Nations. In this way, people have become more aware of their rights, and thus they demand respect for their autonomous decisions.

The questions of medical and human rights progress and its ethical consequences can be observed in family life. Every family is the first and the most

important area of crucial decisions regarding life and health issues. This is the first place of mutual respect and love but also of facing difficulties related to ambiguities of human progress.

The Letter to Families *Gratissimam Sane* states that contemporary civilization is linked to the scientific and technological progress which is often understood in a purely positivistic way. This narrow vision of progress leads to utilitarianism in ethics, whose final point is a civilization of production and use. Thus, persons can be treated as objects: “woman can become an object for man, children a hindrance to parents, the family an institution obstructing the freedom of its members.”¹ We can enumerate even more fruits of the civilization of use. Undoubtedly, not only children can become a hindrance to parents, but also parents can be considered a burden to the children. In the midst of a family the issues of ageing and disability and dependency create not only an occasion for service but also the possibility of abuse. The civilization of use is moving people to violate even the most basic human right, that is, the right to life.

The civilization of production and use is diminishing human dignity. If the essence of a human being is understood only in materialistic terms, putting aside all transcendental dimensions, it is difficult to discover the sense of illness, incapacity, and suffering.

The need to preserve personal autonomy in situations of the loss or diminishing of decision-making capacity is one of the reasons for the legal instrument called advance directives.

What Are Advance Directives?

According to the Encyclopedia of Bioethics, “Advance directives are oral or written statements in which people declare their treatment preferences in the event that they lose decision-making capacity. Advance directives may allow patients to prevent unwanted and burdensome treatments when struck by terminal illness, permanent unconsciousness, or profound mental disability.”²

There are two forms of advance directives. One is the *living will* and the other the *health care proxy* or *durable or lasting powers of attorney for health care*. The living will is a type of instructive directives. It is a written statement

¹ John Paul II, Letter to Families *Gratissimam Sane*, 13, February 2, 1994, accessed April 4, 2015, http://w2.vatican.va/content/john-paul-ii/en/letters/1994/documents/hf_jp-ii_let_02021994_families.html.

² G. S. Fisher, J. Tulskey, R. M. Arnold, *Advance Directives and Advance Care Planning*, in Encyclopedia of Bioethics, vol. I, ed. Stephen Garrard Post (New York: Macmillan 2004), 74.

specifying treatment and medical preferences in the case of losing decision-making capacity. The *health care proxy* is a person or persons who are appointed to make or execute care-giving decisions. Many times both forms are placed together in one document.

In other words, advance directives (written living will and appointed health care proxy) are legal instruments which allow people the opportunity to make decisions regarding future life-death and health issues. In the USA and Western Europe, advance directives are known and used by people.³ There are attempts to extend this kind of legal possibility in other parts of Europe.⁴ However, there are certain ethical controversies over this issue.

The History of Advance Directives

The best way to see these controversies is to study the origin and actual practice of advance directives. The history of advance directives begins in the USA. It is related to the new technical possibilities to sustain human life like the respirator, tube feeding or transplants and to the legal mentality of American society which emphasizes freedom, personal autonomy, and self-determination.

The best known promoter of the living will is Luis Kutner, who in 1969 published the famous article *Due Process of Euthanasia: The Living Will, a Proposal*.⁵ Kutner is aware that the act of taking the life of another person is prohibited by law. However, when this action is motivated by human desire to end suffering, it is not always considered as a wrongful act. Mercy killing raises many different philosophical and theological questions. The approach of the article is legal, and therefore it focuses on the review of the current state of the law and presents Kutner's solution of the problem.

Kutner argues that, although in theory of law, mercy killing is not treated differently from other acts of taking human life, in practice its position is different. Public opinion accepts mercy killing more than other instances of murder.

³ Cf. Susane Brauer, Nikola Biler-Adorno, Roberto Adorno, *Country Reports on Advance Directives*, accessed May 3, 2015, http://www.ethik.uzh.ch/ibme/newsarchiv/advance-directives/Country_Reports_AD.pdf.

⁴ About Polish discussion on advance directives, cf. Małgorzata Jantos, "Czy decydujemy o swojej śmierci?," *Kwartalnik filozoficzny* 42, no. 3 (2014): 171–85; Maciej Syska, *Medyczne oświadczenia pro futuro na tle prawnoporównawczym* (Warszawa: Wolters Kluwer, 2013); Marcin Śliwka, Anita Gałęska-Śliwka, "Regulating End of Life Decisions in Poland. Legal Dilemmas," *Advances in Palliative Medicine* 10, no. 2 (2011): 49–56.

⁵ Luis Kutner, "Due Process of Euthanasia: The Living Will, a Proposal," *Indiana Law Journal* 44, no. 4 (1969): 539–54.

It is possible to observe sympathy for the mercy killer and therefore the court or jury have less desire to inflict the same punishment as for other types of taking human life.⁶

In Kutner's opinion, the British and American legal system is not coherent on the issue of euthanasia. On the one hand, it is difficult to defend the victim of someone who is posing as a mercy killer, whereas on the other hand, "the law does not recognize the right of the victim to die if he so desires. He may be in a terminal state suffering from an incurable illness and literally forced to continue a life of pain and despair. Such a denial may well infringe upon an individual's right of privacy."⁷ A legal regulation is needed also regarding the issue of aiding and abetting suicide voluntarily requested by a competent person.

The argumentative strategy of Kutner supporting euthanasia is developed on the basis of the free consent of a patient. The law prohibits mercy killing or aiding in this action. However, an individual has a right to refuse treatment even if its goal is to prolong his or her life. The physician is legally bound by the consent of a patient who can request termination of treatment if his or her condition becomes incurable.

The free consent can be formulated by a competent patient even before the eventual possibility of losing the decision-making capacity. Kutner states: "The patient may not have had, however, the opportunity to give his consent at any point before treatment. He may have become the victim of a sudden accident or a stroke or coronary. Therefore, the suggested solution is that the individual, while fully in control of his faculties and his ability to express himself, indicate to what extent he would consent to treatment. The document indicating such consent may be referred to as 'a *living will*,' 'a declaration determining the termination of life,' 'testament permitting death' [...] or other similar reference. The document would provide that if the individual's bodily state becomes completely vegetative and it is certain that he cannot regain his mental and physical capacities, medical treatment shall cease."⁸

The living will should be confirmed by witnesses. Kutner underlines that the patient is free to change his or her will any time. By this written statement the patient is limiting the authority of the doctor and another medical person on his or her body. The patient can deny treatment and even change the physician.

There are no doubts that Kutner's proposal is controversial. On the one hand, it can be treated as the promotion of euthanasia. On the other, it safeguards the autonomy of the patient in the context of the tyranny of technical possibilities of medicine and a paternalistic approach of medical services.

⁶ Cf. *ibid.*, 542.

⁷ *Ibid.*, 543.

⁸ *Ibid.*, 551.

Kutner's contribution was important in establishing a legal standard in solving healthcare preferences for incompetent patients. But the history regarding advance directives is related also to famous court battles in the USA. There are two well-known cases which are classical in the legal and bioethical literature.

One is the case of Karen Ann Quinlan who, after having taken alcohol combined with drugs, had suffered severe brain damage and was diagnosed in a persistent vegetative state. Her Catholic parents, after long consideration, requested the removal of the respirator that was considered an extraordinary means to sustain her life. The request was brought by the hospital officials to court whose decision became a point of reference in later legislation. According to the verdict of the court, although Karen Quinlan failed to arrange any decision regarding refusal of treatment, her father-guardian could make it on her behalf. The court allowed to forgo treatment if the family would request it. In this way, the ventilator was disconnected, as the family requested. However, Karen did not die immediately. Ten years later she passed due to pneumonia complications.⁹

The second case is related to Nancy Cruzan. In 1983 Nancy had a car accident which resulted in severe brain damage. After recovery from coma she was able to ingest orally some nutrition. To ease the feeding process and rehabilitation surgeons implanted a feeding tube. Unfortunately, Nancy was unable to regain her mental faculties and remained in a persistent vegetative state. Her parents requested termination of artificial hydration and nutrition from the hospital. The hospital refused and the court had to decide. After a long trial in 1990, the court, based on the testimony of witnesses who claimed that in conversations Nancy suggested that being in persistent vegetative state she would not wish to continue on with artificial hydration and nutrition, allowed the termination of this procedure. The life of Nancy Cruzan came to an end. Her case established a constitutional right to end life sustaining treatment when the patient would have wanted such an action.¹⁰

The legal instrument of advance directives was supported by the Congress of the US in 1990. Congress proclaimed the Patient Self-Determination Act (PSDA).¹¹ For institutions like hospitals and nursing homes which receive federal funds (Medicare, Medicaid) the law requires that adults under their care be

⁹ Cf. The President's Council on Bioethics, *Taking Care: Ethical Caregiving in Our Aging Society* 9. Washington D.C. 2005), 60. Hereafter as *Taking Care*; Robert D. McFadden, *Karen Ann Quinlan, 31, Dies; Focus of '76 Right to Die Case*, accessed May 3, 2015, <http://www.nytimes.com/1985/06/12/nyregion/karen-ann-quinlan-31-dies-focus-of-76-right-to-die-case.html>.

¹⁰ Cf. William H. Colby, *Long Goodbye: The Deaths of Nancy Cruzan* (Carlsbad, CA: Hay House, 2002).

¹¹ 42 U.S. Code Service sections 1395i-3, 1395l, 1395cc, 1395bbb, accessed June 1, 2015, <http://uscode.house.gov/>.

given information about the right to make advance directives. The act of making advance directives should be recorded in medical documentation.

Why Write a Living Will? Reasons to Possess Advance Directives

In recent years, the need of having advance directives was exemplified in the context of a tragic and controversial case of Terri Schiavo.¹² In 2005, Terri Schiavo, a 41-year-old woman from Florida, died after 15 years of being in a persistent vegetative state. Her husband claiming she would not want to be kept alive through artificial means wanted to take her off life support. After seven years of fighting Schiavo's parents, he succeeded in the court and it was ordered to stop her feeding tube. The case was even debated by the Florida legislature and U.S. Congress.¹³ Proponents of the living will say that the bitter family battles over the rights of Terri Schiavo could have been avoided if only she had established her treatment preferences.

The Schiavo case, in which a young person enters a persistent vegetative state after an accident, is not representative of the reason for advance directives. The most typical scenario in which these directives are appropriate is the gradual decline of mental and physical capacities which is proper to dementia, for example Alzheimer's disease. The possession of a living will written ahead of time of devastating effects of degenerative disease is considered especially urgent.

There are many other reasons in favor of advance directives in the form of a living will. The first one is related to legal problems concerning the end of life issues. In the world characterized by excessive sensitivity to personal autonomy and rights, the living will can decrease the risk of litigation and legal battles. Physicians and the loved ones of a patient can treat this document as a useful tool to solve possible legal problems.

¹² Gerard R. Cassagnol, *Living Wills Review: Five Reasons Why You Must Have a Living Will*, accessed June 4, 2015, <http://livingtrustnetwork.com/estate-planning-center/advance-directives/what-the-experts-say/living-wills-review-five-reasons-why-you-must-have-a-living-will.html>.

¹³ Rebecca Dresser, *Schiavo's Legacy: The Need for an Objective Standard*, *The Hastings Center Report*, vol. 35, no. 3 (2005): 20–22; Mary Schindler, Robert Schindler, Suzanne Schindler Vitadamo, Bobby Schindler, *A Life That Matters: The Legacy of Terri Schiavo—A Lesson for Us All* (New York: Werner, 2006).

Proponents underline that the living will is a way to preserve self-determination and autonomy. A patient can remain an active participant in important decisions regarding treatment or non-treatment and other critical issues. The choice of benefits and burdens of medical care is made while still in possession of one's own faculties. A living will can safeguard personal freedom when approaching the end of life. It is helpful to avoid dying in circumstances considered as unworthy or undignified. This document is also able to protect against maltreatment. In the medical world it is so easy to suffer from over-treatment or under-treatment. The life sustaining measures at the end of life can be overused or too little could be done on our behalf. A living will keeps these possibilities under control.

End-of-life issues can lead to anxiety and worries about the suffering of our loved ones. A living will can relieve these emotional turbulences. It is easier to face the future after making peacefully reasonable choices. The written document can be a great help to the family members, friends, and caregivers giving them a clear set of medical preferences. The statement about crucial decisions will increase in the loved ones a degree of confidence in their prudential judgments.

Advocates of the living will argue that this document can remove the painful burden of end-of-life decision which falls on the family members. On the one hand, they can, together with doctors and caregivers, make sound decisions to continue or to stop treatment. On the other, the decision making process for the family is less painful and done with a degree of confidence and closure.

The living will is useful in controlling financial issues. The cost of medical procedures is high and it is reasonable to manage prudently financial resources. Certain medical interventions are excessively expensive having limited value in the patient's final stages of life. A living will can prevent unnecessary spending and bring peace in the time of making important and costly decisions.

There is also one additional reason to work on a living will which cannot be overlooked. The composing of a living will can be treated as part of a wider process, that is, advance care planning. Individuals in consultation with their loved ones (family, friends) and physicians plan for medical care in the event of losing decision-making capacity.

The document of the Presidential Commission describes the care planning in the following way:

The process of preparing and executing a living will can be seen as a way to promote conversation among loved ones and with doctors about one's values and preferences regarding illness, medicine, and dying. Regardless of whether the explicit directives contained in the document eventually guide the patient's medical treatment, the mere exercise of preparing a living will can encourage greater thoughtfulness and communication between the patient, his family,

and his doctor as to how he would like to be cared for. Preparing a living will might be, for many people, the first occasion to articulate for themselves and for those who might care for them just how they would like their lives to end or how they would like to be cared for until the end.¹⁴

A dialogue about critical issues regarding values, healthcare, ageing and dying is needed in a basic structure of society, that is, in the family. It is worthy to talk about these topics in a way that the loved ones would have a clear image of personal preferences of someone dear to them. In a natural way, the loved ones are becoming health care proxies. Parents, husband or wife, children and members of the extended family are ordinary representatives of someone who has lost his or her ability to decide. Sometimes this is a privilege and duty of a friend, lawyer or physician who are legally appointed as proxies.

To become a health care proxy by family bonds or by appointment does not involve moral problems. The major area of controversies is written instruction, that is, the living will. In spite of decades of existence and public discussion in the most familiar with the living will society of the USA, only small percentage of people has signed this document.¹⁵

Summarizing this situation a few years ago, the President's Council of Bioethics stated the following:

Despite years of urging, most Americans do not have living wills, either because they would rather not think about their own dependence and death, or because they are wise enough to know that aging and dying sometimes mean placing oneself in the care of others. Not only are living wills unlikely to achieve their own stated goals, but those goals themselves are open to question. Living wills make autonomy and self-determination the primary values at a time of life when one is no longer autonomous or self-determining, and when what one needs is loyal and loving care. This paradox is at the heart of the trouble with this approach to care-giving.¹⁶

Thus, two factors are stressed in this conclusion. Some people do not have living wills because they are ignorant, or, saying it another way, they are indifferent toward planning their own remote future. Others lack a living will knowingly and willingly, considering this document as being useless. The mere fact of the presence of loved ones will suffice to have a peaceful assurance of one's future. Of course, ignorance or indifference is possible to overcome. There

¹⁴ *Taking Care*, 70.

¹⁵ Jeff L. Yates, Henry R. Glick, "The Failed Patient Self-Determination Act and Policy Alternatives for the Right to Die," *Journal of Aging & Social Policy* 94 (1997): 29–50; A. Fagerlin, C. E. Schneider, *Enough. The Failure of the Living Will*, The Hastings Center Report, vol. 34, no. 2 (2004): 32–42.

¹⁶ *Taking Care*, 55.

are positive examples of passing from indifference concerning a living will to a massive social movement supporting it.¹⁷ But the scale of this success is relatively small. Proxy directives serve the wise and helpful purpose of putting one's trust explicitly in the hands of loved ones who will bear the burden of providing care and making decisions. However, the paradox related to autonomy and self-determination remains without solution. An example of how the living will and proxy directives can operate follows in the case of Mr. A.

The Case of Mr. A.

Mr. A., a 74-year-old retiree, fell from his roof while doing yard work. He was stabilized and intubated at the scene and taken to the hospital, where he was found to have a high cervical fracture with impingement on the spinal cord. It was determined that he had no neurologic function below his face. He remained unconscious for two days, during which time he was transferred to a university hospital to undergo neurosurgical procedures. [...] Mr. A.'s living will, written before his accident, stated that he did not want any life-sustaining treatment in the event he was unable to communicate, and authorized the discontinuance of such treatment in the event it had been begun. His living will was shelved while the medical team evaluated whether improvement could be effected, and at the request of his family.

Three days after his fall, Mr. A. regained consciousness. [...] Even when he was asked to answer questions with eye blinks, he seemed unable to understand instructions and seemed unable to communicate using this method. Members of his family were with him constantly during his hospitalization, and they said that Mr. A. could understand them and could answer appropriately when he was addressed in Italian (he had emigrated from Italy 30 years prior). [...]

A week after the accident, Mr. A.'s physicians felt it was extremely unlikely that he would regain further neurologic function, and, as a quadriplegic, would require chronic ventilatory and nutritional support. The team did not tell Mr. A. about his prognosis [...]. The staff met with Mr. A.'s family members and told them his prognosis. [...] Since the staff believed that most likely Mr. A. could neither understand nor effectively communicate, they wondered why his living will was being 'overridden' by the hospital. When Mr. A.'s family overheard a nurse say that discontinuing care for Mr. A. was a 'no-brainer,'

¹⁷ Implementation effort of the social program "Respecting Your Choices" introduced in La Crosse, Wisconsin, in 1993 brought up to 85 percent of patients who had completed advance directives. Bernard J. Hammes, Brenda L. Rooney, "Death and End-of-Life Planning in One Midwestern Community," *Archives of Internal Medicine* 158, no. 4 (1998): 383-90.

because it was 'required' by his living will, the family feared that the staff was not looking out for Mr. A's best interests, and that the staff wanted to 'kill him.'

In response to the family's concerns, nine days after the accident, the resident and intensive care fellow caring for Mr. A. in the ICU had a meeting with the family to restore communication and formulate a plan on how to proceed. [...] Mr. A.'s family said that they did not intend to advocate for heroic measures, but were concerned that the staff was ignoring Mr. A.'s best interests. They said they were advocating only for continuing care until Mr. A. was able to make a decision for himself about his future.

The family said that they did not know anything about Mr. A.'s living will, other than that Mrs. A., his wife, had also signed it. The family said that Mrs. A. was confused about the meaning of the living will, and the family was unsure what Mr. A. would want in this situation, despite what the living will stated. [...]

An hour later, the medical team and family, with a translator [...] gathered in Mr. A.'s room. [...] Through the translator, the fellow and resident told Mr. A. his prognosis, and Mr. A. indicated that he understood. As a way to introduce the topic of making decisions about treatment, the staff brought up Mr. A.'s living will, and then asked the translator to ask Mr. A. whether he wanted 'to continue treatment, or to have treatment withdrawn, knowing that it would result in death.' The translator asked instead, 'Do you want to comply with the provisions of your living will, in which you signed a document that stated that if you were incapacitated you would want treatment withdrawn, or do you want to ignore your will and continue with treatment?'

The staff asked Mr. A. if he wanted to make a decision at that time, or if he needed more time. He responded in the affirmative when given the option of taking two days to make a decision. After the interview, the family, who were fluent in English and Italian, commended the translator for doing a wonderful and compassionate job. After this meeting, they said they realized that everyone was on the same side, working in Mr. A.'s best interest. On leaving the meeting, the fellow filled out a do-not-resuscitate (DNR) order for Mr. A., even though he had not spoken with Mr. A. or with Mr. A.'s family about it.

Two days after the family meeting that included Mr. A., the family approached the medical team and said they no longer felt that Mr. A. was able to communicate. His eye-blinking responses were no longer appropriate, and at times he did not blink in response to questions at all. After speaking with their priest, the family felt more comfortable making a decision on behalf of Mr. A. They requested the withdrawal of life support. The ventilator was turned off that evening and Mr. A. expired within minutes. His family expressed their gratitude and satisfaction to the staff.¹⁸

¹⁸ Ari VanderWalde, *Clinical Ethics Case Report*: "Questionable Capacity and the Guidance of Living Wills," *Journal of Clinical Ethics* 22, no. 3 (2011): 250–55.

Discussion and Critical Remarks

The case of Mr. A. is very instructive. In a practical way, we can see how far it is possible to base one's own future on a living will and what the role of proxies in deciding the course of medical and life sustaining procedures is. Probably the greatest problem of Mr. A. was his poor understanding of possible clinical conditions. In the history of living wills, the earliest versions said nonspecifically about "heroic" measures approaching death. Later versions were focused on ordering the withholding or withdrawing of certain types of medical interventions such as resuscitation, respirator aid, the use of antibiotics or artificial hydration and nutrition. Mr. A.'s living will stated that he "did not want any life-sustaining treatment in the event he was unable to communicate." It is easy to understand what is meant by "life sustaining treatment" but the expression "unable to communicate" is not quite clear. The vague expression about ability to communicate can cover a wide spectrum of situations from a persistent vegetative state to a permanent failure of vocal chords. Mr. A. became a quadriplegic with restricted ability to communicate and had a poor overall prognosis. But in this state his capacity to communicate was probably suspended only temporarily. The poor understanding of clinical conditions is confirmed by Mr. A.'s wife who was confused about the content of the living will which she signed together with her husband. As Fagerlin and Schneider strikingly suggest, "Not only do people regularly know too little when they sign a living will, but often (again, we're human) they analyze their choices only superficially before placing them in the time capsule. An ocean of evidence affirms that answers are shaped by the way questions are asked. Preferences about treatments are influenced by factors like whether success or failure rates are used, the level of detail employed, and whether long or short-term consequences are explained first."¹⁹

There are no doubts that it is necessary with this type of written instruction to consult with a physician and loved ones. It can safeguard the coherence of the values of a person and his basic convictions on life and death. As we could see, Mr. A. and his wife did not consult about the content of their living wills with the rest of the family. The family was confused about the meaning of living will and "unsure what Mr. A. would want in this situation, despite what the living will stated." In other words, they were aware that the content of the living will was not expressing Mr. A.'s convictions.²⁰

¹⁹ Fagerlin, Schneider, *Enough*, 33.

²⁰ Edmund Pellegrino, based on years of experience in dealing with patients in clinical conditions, described the need of consultation in the following way: "Patients especially need the input of others if their own choices are to be genuine ones. Physicians are needed to provide information and to discuss this information with patients [...]. Patients must compare their values

Three days after the fall, Mr. A. regained consciousness so it was possible to communicate with him. In this context, the living will lost its weight. It was possible to establish his prognosis and to ask him what he would decide to do in the new situation. Unfortunately, the living will written some time ago was treated as a permanent statement of Mr. A. without the possibility to override it. All who were involved in the case: physicians, nurses, and family members were convinced that they were working in Mr. A.'s best interest, but they ignored the fact that his living will had no absolute value. So the help of the translator who asked: "Do you want to comply with the provisions of your living will, in which you signed a document that stated that if you were incapacitated you would want treatment withdrawn?" probably only brought more confusion to a quadriplegic patient. Finally, he never gave an answer. Next two days which he took for consideration brought him back to unconsciousness.

Mr. A.'s case invites us also to a reflection on the autonomy of a patient. It is clear that Mr. A.'s will was not respected. The physician without consultation with Mr. A. and his proxies wrote a DNR order. The patient's autonomy is seen as a protection against medical paternalism.²¹ In the light of paternalism, the physician, as better informed, considers his or her duty to decide on behalf of the patient's best interests. It is wrong to override the free choice of a patient, as he or she cannot be treated instrumentally.

On the other hand, it is valuable to ask how far it is possible to respect a patient's autonomy. Is there any limit to a patient's choices or can he demand whatever he wishes? If the patient's choice is written in a living will, should it be absolutely respected? At first, Mr. A.'s living will was ignored. The medical team was doing everything to ameliorate his condition even though the living will stated that if he was unable to communicate he did not want any life-sustaining treatment. Did they proceed in a suitable way? I think they did. The fact is that after regaining consciousness Mr. A. requested two days to think about the provisions written in his living will and was not protesting that the medical team ignored them.

It is evident that it is not easy to understand one's own medical situation and make irreversible decisions. Probably, two days would not have been enough for

with those of others in the context of some community of belief which they accept in whole or in part. Patients cannot identify with their current choices without reference to some structure of values which they formed in the past and which they reaffirm or reject at the moment of choice." Edmund D. Pellegrino, "Patient and Physician Autonomy: Conflicting Rights and Obligations in the Physician-Patient Relationship," *Journal of Contemporary Health Law and Policy* 10, no. 2 (1994): 50–51.

²¹ Beauchamp and Childress define "paternalism" as "the intentional overriding of one person's preferences or actions by another person, where the person who overrides justifies this action by appeal to the goal of benefitting or of preventing or mitigating harm to the person whose preferences or actions are overridden." Tom L. Beauchamp, James F. Childress, *Principles of Biomedical Ethics*, 6th ed. (New York: Oxford University Press, 2009), 208.

Mr. A. to make an ultimate decision. It is hard not to agree with an interesting observation of Carl Schneider:

People do not predict their own future happiness very accurately. Now part of what's going on here is that, in fact, it's true that experience is in many ways the best teacher, and experience often counsels us to reconsider our opinions. People these days routinely recite the mantra that the quality of life is more important than the quantity of life, and they believe it up to the point at which the quantity of life actually becomes an issue, at which point they become remarkably unwilling to give up increments of quantity in order to get fairly large increments of quality. [...] People who are very ill think that their lives are much more satisfactory than observers of their lives think.²²

We asked about the limits of the patient's autonomy. Far from supporting paternalism, it is necessary to underline that one of the limits of a patient's autonomy is the autonomy of a physician or other medical agent. A living will can contain requests which go against the physician's conscience. Edmund Pellegrino reflects on this in the following way:

The autonomy of the physician is often neglected. This philosophy has serious defects. The physician-patient relationship is one of mutual obligations—like any truly ethical relationship. The physician as a human being has the same claim to respect for his or her capacity, to make personal choices, to follow his or her conscience about what is good medicine and what is morally acceptable as a person. Personal and professional ethics are not fully separable from each other. Therefore, the patient's moral right of autonomy must be balanced with respect for the physician's autonomy. Autonomy cannot be a unilateral moral right for either patients or physicians.²³

We have to remember that the earliest proposal of a living will written by Kutner was clearly related to euthanasia.²⁴ If the first commandment of the medical profession states *primum non nocere*, how is it possible to justify medical decisions which go directly against human life? We can imagine this only in the civilization of use in which people are treated as objects equipped with consciousness. But this civilization is not the only one that governs our world. Inherent human dignity should be respected at any period of life, especially when life is stigmatized by illness and suffering. Because of this—as it was precisely pointed out by William E. May,

²² Carl E. Schneider, *Session 2: Aging and Care-Giving: Options for Decision-Making*, December 2, 2004, accessed May 5, 2015, <https://bioethicsarchive.georgetown.edu/pcbe/transcripts/dec04/session2.html>.

²³ Pellegrino, *Patient and Physician*, 51.

²⁴ Cf. *ibid.*, n. 5.

human autonomy is not unlimited. Its *rightful* exercise enables us to achieve our fulfillment, our perfection, but it is subservient to our *good as persons*. [...] If our choices seriously undermine in us our capacity to flourish as human persons, and if, *a fortiori*, they aim to damage aspects of this capacity in others, there is no reason to respect such choices. And the intentional killing of ourselves or others, no matter what the reason, is a choice that sets us against the inherent goodness human life.²⁵

There are no doubts that autonomy has a relative value. What is absolute is human dignity. Based on this dignity a patient is entitled to write advance directives in the form of a living will. Mr. A. did this, however, as we could see, on the one hand, his living will was not well formulated and on the other, it was not used correctly. What then is the function of a living will, and how should it be used in clinical conditions? It is understandable that it cannot be disregarded.

Simply ignoring the patient's written instructions would give too little regard to the person's former beliefs about the shape and character of a good life. But giving those wishes trumping power may force caregivers to forgo doing what is best for the person who is now entrusted to their care; as moral agents themselves, caregivers cannot simply do what they were told but must also try to do what is best.²⁶

Reading Mr. A.'s case at the end of the story we find unexpectedly a short description of the final solution. It does not give an impression of a happy ending. The family, based on the inability to communicate (incorrect eye-blinking) made the decision to withdraw the life support. In a few minutes after turning off the ventilator Mr. A. expired. The controversy over this description can come partially from the incomplete knowledge of the precise clinical condition of the patient. We do not know if the machine assisted or replaced completely Mr. A.'s spontaneous breathing. The fact is that after turning it off Mr. A. passed away. His neurological condition is also unknown. It is obvious that his brain was not severely damaged. The ability to communicate and understand indicated that the higher brain functions were working properly. Probably, the lack of communication was only temporary and after a certain time it could have been restored. Mr. A. was not terminally ill. He could live for years after the accident but surprisingly he even did not have a chance to confirm his decisions written in the living will. Why did his family make this drastic choice? Is there a limit in proxy decisions?

²⁵ William E. May, *Catholic Bioethics and the Gift of Human Life* (Huntington, IN: Our Sunday Visitor, 2000), 248–49.

²⁶ *Taking Care*, 84.

The family, as we saw, was doing everything in Mr. A.'s best interest. Their decision in consultation with the priest had no homicidal intention. But I doubt if this was the best decision. A good intention is only one of the factors which make a human act good. The act itself should be morally good. More things could have been done for Mr. A., especially additional attempts to communicate with the patient. A second opinion on the neurological condition and better understanding of the role of a living will could have changed the end of this story. The limits of proxy decisions are the same as in the case of the patient's autonomy, that is, human dignity. It should never be violated even at the request of a patient.

Conclusion

Advance directives are written or oral statements which allow people to decide on their medical preferences when they lose decision-making capacity. They have two forms. One is called a living will which is a written statement and the other is oral, which is called health care proxy. The history of advance directives is related to an attempt to introduce the possibility of euthanasia and controversial legal battles over the right to withdraw life sustaining treatment for patients who were unconscious. Advance directives are legally accepted in many countries but they are still a topic of moral controversies. They are proposed as a way to preserve autonomy and self-determination, avoid legal problems, ease anxiety and worries of the loved ones, manage financial issues better and promote conversation about the person's values and preferences regarding illness, suffering, and dying. These important goals and decades of advertising them did not make them popular. Major moral problems concern the living will. Life is dynamic and even the best scenario is unable to fit an actual clinical situation. Many times provisions stated in living wills go against the good of unconscious patients. People usually do not take sufficient time to analyze their content when they sign them, but later they are submitted to consequences of superficial decisions. Autonomy itself, which is the primary value of living wills, can be easily misunderstood. This value has its limits in human dignity and the autonomy of physicians and other members of a medical team. Autonomous decisions stated in a living will cannot be treated as something non-negotiable. They cannot go against the good of a person. The good of ill and incompetent patients is the major concern of health care proxies. Their primary function is to fulfill the patient's will and to make crucial decisions on behalf of incompetent patients in a clinical condition. They have to act with reference to the structure of the patient's values and respect human dignity.

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Witold Kania

Problèmes moraux liés aux directives anticipées

Résumé

La lettre *Gratissimam Sane* souligne que la civilisation contemporaine appuyée sur l'utilitarisme traite les gens comme des «objets» et non comme des «personnes». La civilisation utilitariste influence aussi la vie familiale. Dans ce contexte, l'article analyse le problème de directives anticipées. L'introduction constitue le précis historique des directives anticipées. Les origines des directives anticipées sont liées aux mouvements promouvant l'euthanasie et aux décisions juridiques controversées concernant les patients qui ont perdu la capacité de prendre des décisions conscientes. Ensuite, l'auteur présente les causes principales pour lesquelles on rédige un testament de vie ou désigne un mandataire dans le cadre de la représentation du patient. La deuxième partie présente le cas clinique de Monsieur A. Ce cas est une bonne illustration des problèmes liés à l'interprétation et l'application des directives anticipées. L'article finit par une discussion sur *casus* qui se concentre autour de la dignité et de l'autonomie aussi bien du patient que du médecin, ainsi qu'autour des limites des décisions prises au nom du patient.

Mots clés : directives anticipées, euthanasie, désignation d'un mandataire dans le cadre de la représentation du patient, autonomie, dignité humaine

Witold Kania

Problemi morali relativi alle direttive anticipate

Sommario

La lettera *Gratissimam Sane* sottolinea che la civiltà moderna, basata sull'utilitarismo, tratta le persone come "cose" e non come "persone". La civiltà dell'uso influisce anche sulla vita familiare. In questo contesto, il documento analizza il problema delle direttive anticipate. L'introduzione contiene dei cenni storici sulle direttive anticipate. Le origini delle direttive anticipate sono collegate a movimenti che promuovono l'eutanasia e a controverse decisioni giudiziarie relative a pazienti che hanno perso la capacità di prendere decisioni consapevoli. Sono poi presentati i motivi principali per i quali si redige il testamento biologico o si delega qualcuno tramite procura medica. La seconda parte presenta il caso clinico del signor A.

Questo caso illustra bene i problemi connessi all'interpretazione e all'applicazione delle direttive anticipate. L'articolo si conclude con la discussione del caso, incentrata sulla dignità e sull'autonomia sia del paziente che del medico nonché sui limiti delle decisioni prese in nome del paziente.

Parole chiave: direttive anticipate, eutanasia, procura medica, autonomia, dignità umana

Part Two

Juridical Canonical Thought

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“Common Good of Marriage and the Family.” Canonical Reflections

Abstract: The initial thesis of the study is John Paul II’s proclamation in the Letter to Family (1994), which states that an individual can exist “for himself” through the sincere gift of self—and, at the same time, fulfill himself as “common good”: “the common good of the whole of the society” and “the common good of marriage and the family” (nn. 10, 11). These latter words give an impulse to undertake an attempt of transforming the profound theological thought of the papal document into conclusions on the canon law plane. The most fundamental ones seem to be: (1) a considerable meaning for the Church matrimonial discipline has its foundation on a realistic vision of a human being; (2) a basis of the contemporary theological and legal doctrine *de matrimonio et familia* is the structural (ethical) principle of love; (3) the acceptance of the appropriate premises of the juridical anthropology of marriage gives life to all attempts of setting the personalistic dimension of marriage against its legal value; (4) the indissoluble character of marriage is the basis of the common good of the family.

Keywords: marriage, family, canon law marriage and family, juridical anthropology of marriage, indissoluble character of marriage, common good of the family

Testimony of a high test of humanism—it is how we can summarize the pontificate of Saint John Paul II, pope philosopher and theologian, great promoter of personalistic thought; pontificate “programmed” with the famous dictum: “Man is the way for the Church.”¹ Consideration of *persona humana*, which due to its human dignity deserves exclusively affirmation, allowed the pope to study

¹ John Paul II, Encyclical Letter *Redemptor Hominis* (March 4, 1979) Acta Apostolicae Sedis [AAS] 71 (1979): 257–324, n. 14. Henceforth as RH.

thoroughly the truth about matrimony² and family³—in the memorable passages (emanating *veritatis splendor* and leading *gaudium et spes*⁴), like the one from the Letter to Families *Gratissimam Sane* (1994):

The common good of the whole of society dwells in man; he is [...] “the way of the Church.” Man is first of all the ‘glory of God’: *Gloria Dei vivens homo*, in the celebrated words of Saint Irenaeus, which might also be translated: “the glory of God is for man to be alive.” It could be said that here we encounter the loftiest definition of man: the glory of God is the common good of all that exists; the common good of the human race.⁵

The metaphysical vision, developed by the Creator of “theology of the body,”⁶ invariably provides—today similarly as three decades ago—favorable conditions to “rediscover the truth, goodness, and beauty of the marriage institution.”⁷ It is all about an “environment,” in which an individual can exist “for himself/herself” through the sincere gift of self⁸—and at the same time reach fulfillment as “common good”: “the common good of the whole of the society”⁹ and “the common good of marriage and the family.”¹⁰

² See Andrzej Pastwa, “Przymierze miłości małżeńskiej.” *Jana Pawła II idea małżeństwa kanonicznego*. Katowice: Wydawnictwo Uniwersytetu Śląskiego, 2009.

³ See Wojciech Góralski and Andrzej Pastwa, “Rodzina suwerenna”—“Kościół domowy.” *W nurcie współczesnej myśli prawnej Kościoła powszechnego i Kościoła w Polsce*. Katowice: Wydawnictwo Uniwersytetu Śląskiego, 2015.

⁴ Cf. Giovanni Paolo II, *Discorso nel corso dell’incontro mondiale con le famiglie* (October 8, 1994), n. 7, accessed January 27, 2015, http://www.vatican.va/holy_father/john_paul_ii/speeches/1994/october/documents/hf_jp-ii_spe_19941008_incontro-famiglie_it.html.

⁵ John Paul II, Letter to Families *Gratissimam Sane* (February 2, 1994) AAS 86 (1994): 868–925, n. 11. Henceforth as GrS.

⁶ See John Paul II, *Man and Woman He Created Them. A Theology of the Body* 1,2–4, trans. Michael Waldstein (Boston: Pauline Books & Media, 2006); see also Jan Paweł II, *Mężczyznę i niewiastę stworzył ich. O Jana Pawła II teologii ciała*, vol. 1–4, ed. Tadeusz Styczeń (Lublin: Redakcja Wydawnictwa KUL, 1998).

⁷ John Paul II, Allocutio “Ad Rotam Romanam habita” (January 29, 2004), AAS 96 (2004): 352, n. 7.

⁸ Cf. Vatican Council II, Pastoral Constitution on the Church *Gaudium et Spes* (December 7, 1965), AAS 58 (1966): 1025–1115, n. 24,3. Henceforth as GS; see Karol Wojtyła, *Love and Responsibility*, trans. Harry T. Willetts (New York: Farrar, Straus and Giroux, 1981).

⁹ GrS, n. 11.

¹⁰ GrS, n. 10.

*Famiglia quid dicis de te ipsa?*¹¹

"Family, what do you say of yourself?" The question by the means of which 20 years ago John Paul II inaugurated the celebration of the International Year of the Family—which constitutes a peculiar invitation to integrate the scientific contemplation of the vital cell of the society and the Church, with a consistent referring to the truth of the "beginning"¹²—found in the quoted Letter to Families—resonance and continuation in a penetrating study of the issue of "common good of marriage and the family." It suffices to say that this crucial thread of the doctrine *de matrimonio et familia*, expressed *explicite* in the title of the 10th number of the *Gratissimam Sane*, constitutes a leading theme of the entire document and, similarly to the motto, it constantly returns in the successive presentation of the I chapter, which bears a characteristic title: the "Civilization of Love."¹³

The discourse in the Letter to Families, conducted around the said formula ("the common good of marriage and the family") reaches its climax in the fragment, in which the "Pope of the Family"¹⁴ discusses a conciliar (let us add: close to his heart¹⁵) principle¹⁶ of responsible procreation/responsible parenthood.¹⁷ If marriage and family bear a particular and exceptional responsibility for some common good, then this common good is the human being: a person, indented

¹¹ Giovanni Paolo II, *Discorso nel corso dell'incontro mondiale*, n. 1.

¹² "The family must go back to the 'beginning' of God's creative act, if it is to attain self-knowledge and self-realization in accordance with the inner truth not only of what it is but also of what it does in history"—John Paul II, Apostolic Exhortation *Familiaris Consortio* (November 22, 1981), AAS 74 (1982): 81–191, n. 17. Henceforth as FC; cf. Francisco Gil Hellín, "Naturalna struktura rodziny: dar i zadanie," in *W trosce o dobro małżeństwa i rodziny*, vol. 3: *Rodzina: dar i zadanie, nadzieja ludzkości. Akta Międzynarodowego Kongresu Teologiczno-Pastoralnego z okazji II Światowego Spotkania Rodzin z Ojcem Świętym, Rio de Janeiro, 1–3 października 1997 r.*, ed. Mirosław Brzeziński (Lublin: Wydawnictwo KUL, 2013), 55.

¹³ GrS, nn. 6–17.

¹⁴ Francis, *Holy Mass and Rite of Canonization of Blesseds John XXIII and John Paul II*. Homily, accessed January 27, 2015, http://w2.vatican.va/content/francesco/en/homilies/2014/documents/papa-francesco_20140427_omelia-canonizzazioni.html.

¹⁵ The pope gives expression to the personalistic establishment of this principle in a well-known fragment of the Apostolic Exhortation *Familiaris Consortio*: "This totality which is required by conjugal love also corresponds to the demands of responsible fertility. This fertility is directed to the generation of a human being, and so by its nature it surpasses the purely biological order and involves a whole series of personal values. For the harmonious growth of these values a persevering and unified contribution by both parents is necessary," FC, n. 11.

¹⁶ See GS, nn. 50–51.

¹⁷ Andrzej Pastwa, ed., *W orbicie zasady »odpowiedzialnego rodzicielstwa«. Adekwatne rozumienie pojęcia "bonum proles" wyzwaniem dla współczesnej kanonistyki* (Katowice: Księgarnia św. Jacka, 2014).

in the completeness of its dignity. The papal personalistic magisterium, shaped in such a way, constitutes basis for formulating two introductory remarks. Firstly, the concretization of the concern for common good—embodied in *persona humana*—is the realization of the idea of responsible parenthood. Secondly, an important place in this magisterium is held by an appeal, which calls spouses (man/husband/father and woman/wife/mother) to feel truly responsible,¹⁸ that is, by accepting this responsibility, to discover this unique value and inalienable dignity, which is every human being created in the image and likeness of God.¹⁹

This introductory recognition is fully confirmed by a more in-depth analysis of the content of the Letter to Families *Gratissimam Sane*. The papal discourse, inscribed on the pages of the quoted document, introduces an intent recipient to the very center of the Christian anthropology (let us add: also the center of the authentic juridical anthropology of marriage²⁰). It is suffice to trace the successive “links” in the chain of John Paul II’s original thought:

1. Personal common good—generally speaking, and in particular—common good of marriage and family possesses, at the very foundations, a character of communion and complementarity.²¹ The latter one, determined by the truth about the human sexuality,²² introduces an ontic regularity into the marriage-family *communio personarum*. “Motherhood necessarily implies fatherhood, and in turn, fatherhood necessarily implies motherhood. This is

¹⁸ See Andrzej Pastwa and Monika Gwóźdź, eds., “Amor benevolentiae—ius responsabile: oś interpersonalnego projektu małżeńsko-rodzinnego,” in *Miłość i odpowiedzialność—wyznaczniki kanonicznego przygotowania do małżeństwa* (Katowice: Wydawnictwo Uniwersytetu Śląskiego, 2013), 13–31.

¹⁹ Janusz Nagórny, *Płciowość — miłość — rodzina* (Lublin: Wydawnictwo KUL, 2009), 239.

²⁰ It is worth quoting the words of Benedict XVI: “The citations of Genesis (1:27; 2:24) propose the matrimonial truth of the ‘principle,’ that truth whose fullness is found in connection with Christ’s union with the Church (cf. Eph 5:30–31) and was the object of such broad and deep reflections on the part of Pope John Paul II in his cycles of catecheses on human love in the divine design. On the basis of this dual unity of the human couple, it is possible to work out an authentic juridical anthropology of marriage”—Benedictus XVI, Allocutio “Ad Tribunal Rotae Romanae in inauguratione Anni Iducialis” (January 27, 2007), AAS 99 (2007): 88–89.

²¹ GrS, n. 6.

²² “Male and female in their physical constitution, the two human subjects, even though physically different, *share equally in the capacity to live ‘in truth and love’*. This capacity, characteristic of the human being as a person, has at the same time both a spiritual and a bodily dimension. It is also through the body that man and woman are predisposed to form a ‘communion of persons’ in marriage”—John Paul II, n. 8; see Pontifical Council for the Family, *The Truth and Meaning of Human Sexuality. Guidelines for Education within the Family*, accessed January 27, 2015, http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_08121995_human-sexuality_en.html.

the result of the duality bestowed by the Creator upon human beings ‘from the beginning.’”²³

2. Family derived its “communion” characteristic from the marriage-family community of life and love,²⁴ created in the act of irrevocable personal consent.²⁵ Having unity of the two: of man and woman at its foundations, family—let us say it explicitly—draws its inner solidity from the covenant between the spouses, which Christ raised to a sacrament.²⁶ The words of the marital vow proclaim, first and foremost, what constitutes the common good of marriage: “the common good of the spouses: love, fidelity, honor, the permanence of their union until death.”²⁷ It is the good of both of them, which is simultaneously the good of every single person, and which is to become the good of their children—as Pope John Paul II says: the unity of the two prolonged in their children.²⁸
3. Subsequently, the words of the marital vow emphasize what—as it was already highlighted—touches upon the very nucleus of the discussed good. The Church asks the spouses if they are prepared to accept the children God grants them and to raise the children according to the law of Christ and his Church. This question, by referring to the common good of the just initiated family,²⁹ “is profoundly linked to marital consent, with its solemn promise of love, conjugal respect, and fidelity until death. The acceptance and education of children—two of the primary ends of the family—are conditioned by how that commitment will be fulfilled.”³⁰
4. “This [particular—A.P.] individual” is in a unique and unrepeatable way a common good of his family.³¹ This thought is developed by John Paul II,

²³ GrS, n. 7.

²⁴ Andrzej Pastwa, “‘Famiglia quid dicis de te ipsa?’ Social and Legal Determinants of John Paul II’s “Family” Testament,” in *Aktuálne sociálne etické trendy a problematika spravodlivosti v kontexte strednej Európy a v súčasnom ruskom myslení*, Acta Moralia Tyrnaviensia, vol. V, ed. Helena Hrehová (Trnava 2015): 85–87.

²⁵ GS, n. 48,1.

²⁶ GrS, n. 8.

²⁷ Ibid., n. 10.

²⁸ Ibid., n. 8.

²⁹ Joan Carreras is right when he states that: *La famiglia è fondata dal patto coniugale (cioè dal matrimonio „in fieri”) e sarà veramente matrimoniale soltanto quel patto che abbia l’apertura vitale verso la famiglia. Questa apertura è contenuta nel tradizionale bene della prole [...]. Nel momento del patto nuziale non solo si costituisce la prima relazione familiare ma anche e necessariamente la comunità familiare.* See Carreras, *La giurisdizione della Chiesa sul matrimonio e sulla famiglia* (Milano: Giuffrè, 1998), 195.

³⁰ GrS, n. 10.

³¹ Ibid., n. 11; see Andrzej Pastwa, “Realism of Personalist Vision of Marriage: Legal-Canonical Cogitations,” in *Personalizmus v procese humanizácie ľudskej spoločnosti*, ed. Pavol Dancák (Prešov: Prešovská univerzita v Prešove, Gréckokatolícka teologická fakulta, 2014), 343–55.

when he teaches that the genealogy of the person is inscribed in the very constitution of marriage and family. “Just as the common good of spouses is fulfilled in conjugal love, ever ready to give and receive new life, so too the common good of the family is fulfilled through the same spousal love, as embodied in the newborn child. Part of the genealogy of the person is the genealogy of the family.”³² This is precisely where the deep meaning of the papal teaching is revealed. Considering the “family” nature of the matrimonial bond,³³ the spouses (appointed to become parents) undertake a particular responsibility for the common good of the family. Indeed, the responsible procreation/responsible parenthood³⁴—must be perceived as a concretization of this great assignment, the measure of which is the human dignity.³⁵ Since parenthood constitutes a task of not only physical nature, but also spiritual, then the genealogy of a person—as the Pope of the Family emphasizes—is in its essence the genealogy “in God” (“and which must lead back to Him”).³⁶ In other words, “cooperating with God to call new human beings into existence means contributing to the transmission of that divine image and likeness.”³⁷

That is precisely the way in which, by engrossing in the twists and turns of person’s genealogy, depicted by the master and teacher of personalism, Karol Wojtyła, we discover, not less and not more, the very foundation of marriage and family: marriage and family are ingrained in the Mystery—in love, wisdom, and the creative power of the Triune God. Indeed, in the same way that Carlo Caffarra, an outstanding theologian and canonist, for many years the president of the Pontifical John Paul II Institute for Studies on Marriage and Family, did it in an important study entitled *Fondamenti dottrinali della famiglia* [*Doctrinal Foundations of Family*], the said foundation must be recognized as the theological basis of the Catholic doctrine *de matrimonio et familia*.³⁸

For sure, in the eyes of a lawyer-canonist it is a valuable ascertainment. It is even possible to risk a statement that only on such a “firm” theological basis it is

³² GrS, n. 11.

³³ Cf. Carreras, *La dimensione giuridica*, 203–205; Hector Franceschi, *Riconoscimento e tutela dello „ius connubii” nel sistema matrimoniale canonico* (Milano: Giuffrè, 2004), 392–93.

³⁴ See Andrzej Pastwa, “Odpowiedzialna prokreacja” personalistyczną inkarnacją “bonum prolis?”, in “*Vir Ecclesiae deditus.*” *Księga dla uczczenia Księdza Profesora Edwarda Góreckiego*, ed. Waldemar Irek (Wrocław: Papiński Wydział Teologiczny we Wrocławiu, 2011), 205–26.

³⁵ GrS, n. 12.

³⁶ *Ibid.*, n. 10.

³⁷ *Ibid.*, n. 8.

³⁸ Carlo Caffarra, “Fondamenti dottrinali della famiglia”, in *Atti del Congresso internazionale, Famiglia: cuore della civiltà dell’amore, Roma 6–8 ottobre 1994*, ed. Alfonso López Trujillo, Elio Sgreccia (Città del Vaticano: LEV, 1995), 48.

possible to interpret the principles of the juridical anthropology of marriage³⁹—determinants of an entirely-personal, communion structure of the *institutium matrimonii*. It is proven by the research findings of the already mentioned expert Carlo Caffarra, who in an another interesting article *Matrimonio e visione dell'uomo*⁴⁰ recognizes the criteria, which make it possible to—step by step—indentify the anthropological ground plate of the institutional *consortium totius vitae*.⁴¹

One of the pillars of the Christian personalistic thought is the Second Vatican Council's proclamation: "Man, who is the only creature on earth which God willed for itself, cannot fully find himself except through a sincere gift of himself."⁴² What is the meaning of the conciliar message? What constitutes the first announced criterion? Man and woman are capable of that *transcendere*, and precisely, in a personal gift of love, of going beyond each other toward communion with the "second," and as a result—not losing, by no means, the subjective integrity—"finding oneself in the gift of oneself."⁴³ The key issue here is the possibility of establishing the real reciprocation⁴⁴ in marriage. Meanwhile, the Council *Gaudium et spes* constitution (1965), followed by the Code of Canon Law (1983) and Code of Canons of the Eastern Churches (1990), define marriage as a partnership (*consortium*) of the whole of life, in which a man and a woman mutually give and accept each other.⁴⁵ It is not coincidental that John Paul II in his deep, personalistic teaching, with such a consistence emphasized that the foundation upon which a new "marital covenant of love"⁴⁶ arises, cannot be anything else, but the authentic gift of a person.⁴⁷ It is true that a man and woman (husband and wife) as any personal subject, remain free and autonomously decide about themselves (as *personae sui iuris*). This, still, means that their essential quality is the non-transferability of their individual beings (*alteri incommunicabilis*).

³⁹ A challenge for the science of canon law is a still not fulfilled postulate of preparing a consistent anthropology of *matrimonium canonicum*, cf. G. Erlebach, "Problem wymiaru antropologicznego i prawnego w rozumieniu zgody małżeńskiej," *Jus Matrimoniale* 4 (1999): 9–11. Henceforth as JM; Andrzej Pastwa, "Indissolubilitas... quae ratione sacramenti peculiarem obtinet firmitatem (kan. 1056). Uwagi o relacji nierozzerwalność—sakrament małżeństwa," *Śląskie Studia Historyczno-Teologiczne* 44,2 (2011): 592–96.

⁴⁰ Carlo Caffarra, "Matrimonio e visione dell'uomo," *Quaderni Studio Rotale* 2 (1987): 29–40.

⁴¹ *Code of Canon Law*, can. 1055 § 1. Henceforth as CIC; cf. *Code of Canons of the Eastern Churches* (CCEO), can. 776 § 1.

⁴² GS, n. 24.

⁴³ Cf. Caffarra, *Matrimonio*, 39–40.

⁴⁴ Cf. *Ibid.*, 40.

⁴⁵ GS, n. 48; CIC, can. 1055 § 1, can. 1057 § 2; CCEO, can. 776 § 1, can. 817 § 1.

⁴⁶ FC, n. 11.

⁴⁷ Ioannes Paulus II, Allocutio "Ad Sacrae Romanae Rotae Tribunalis Praelatos Auditores, Officiales et Advocatos coram admissos" (January 28, 1982), AAS 74 (1982): 451–52, n. 6.

And indeed, “in the natural order it makes no sense to speak of a person giving himself or herself to another, especially if this is meant in the physical sense. That which is personal is on a plane where there can be no giving of the self and no appropriation in the physical sense. The person as such cannot be someone else’s property, as though it were a thing.”⁴⁸ Paradoxically, what is impossible in the order of nature (in the physical sense) becomes possible in the order of love (in the moral sense). Yes, this “structural” inalienability and non-transferability of persons-spouses in their “self-possessing” and “self-mastery,” does not signify their confinement in themselves, but on the contrary, expresses their ontical openness and readiness for the marital “gift of themselves.”⁴⁹ It is the betrothed love—as Karol Wojtyła names it—that, in a way, “forcibly detaches” the spouses from their natural inviolability and inalienability. “It makes the person want to do just that—surrender himself/herself to another, to the one he or she loves. The person no longer wishes to be its own exclusive property, but, instead, to become the property of that other. [...] What might be called the law of *ekstasis* seems to operate here: the lover ‘goes outside’ the self to find a fuller existence in another. In no other form of love does this law operate so conspicuously as it does in betrothed love.”⁵⁰ Thus, contrary to what the subjective anti-personalism claims, a man and woman are capable of forming their love-bound reciprocity (communion-bound “we”),⁵¹ whereas the marriage unity (*totius vitae consortium*) featuring “wholeness,” finds its ultimate foundation in a mutual-total and definite-personal gift of the loving each other.⁵²

The identification of the subsequent criterion of juridical anthropology of marriage is facilitated by an appropriate interpretation of the following words of the Pastoral Constitution: “For the good of the spouses and their off-springs, as well as of society, the existence of the sacred bond no longer depends on human decisions alone. For, God Himself is the author of matrimony, endowed as it is with various benefits and purposes.”⁵³ Depiction of the natural relationship of a man and a woman, as an interpersonal communion of love, implies the location of its substance nowhere else, but precisely in the interpersonal *amor coniugalis*.⁵⁴ The Pope of the Family John Paul II emphasizes with his full strength, that love is “the inner principle” and “permanent power” of the

⁴⁸ Wojtyła, *Love and Responsibility*, 96.

⁴⁹ Karol Wojtyła, “O znaczeniu miłości oblubieńczej (Na marginesie dyskusji),” *Roczniki Filozoficzne* 22/2 (1974): 166.

⁵⁰ Wojtyła, *Love and Responsibility*, 125–26.

⁵¹ Cf. Wojtyła, 85.

⁵² Cf. Carlo Caffarra, “La teologia del matrimonio con riferimento al C.I.C.,” in *Teologia e Diritto canonico*, Studi Giuridici, 12 (Città del Vaticano: LEV, 1987), 154–55.

⁵³ GS, n. 48.

⁵⁴ See Andrzej Pastwa, *Prawne znaczenie miłości małżeńskiej* (Katowice: Księgarnia św. Jacka, 1999).

marriage-family *communio personarum*,⁵⁵ and consequently—the essence and role (benefits, purposes) of the family are “in the final analysis specified by love.”⁵⁶ Therefore, it should be remembered that the matrimonial love is, first and foremost, the capability and will of reciprocal love of such a “strength” as the dignity of a person defines, that is, to the measure of good that the partner in marriage constitutes.⁵⁷ Here Carlo Caffarra accentuates the sense and meaning of the mentioned second criterion. In its essence, it makes it possible to answer the question, what in the interpersonal communion of love, established by the means of act of matrimonial consent, should be acknowledged as the true personal good (*bonum in communi*). It turns out that the only determinant here is the personal freedom surrender to the “truth of creation” (“participated theonomy”).⁵⁸

The taken marital vow along with a positive response to the question: “Will you accept children lovingly from God, and bring them up according to the law of Christ and his Church?”⁵⁹—constitute a confirmation of the newlyweds’ internal truth of their love that unites them. In other words, if we refer to a very important passage of the Letter to Families—it is all about a confirmation by a free act of will of what “determines the internal identity of every man and every woman. This identity consists in the capacity to live in truth and love; even more, it consists in the need of truth and love as an essential dimension of the life of the person.”⁶⁰ It is how we have to understand the words of the Pontifical Council for the Family: “With the formula [of the Rite of Marriage—A.P.], spouses commit themselves and promise to be ‘faithful forever’ because their fidelity really flows from this communion of persons, which is rooted in the plan of the Creator, in Trinitarian Love and in the Sacrament which expresses the faithful union between Christ and the Church.”⁶¹

⁵⁵ FC, n. 18. “The love between husband and wife and, in a derivatory and broader way, the love between members of the same family—between parents and children, brothers and sisters and relatives and members of the household—is given life and sustenance by an unceasing inner dynamism leading the family to ever deeper and more intense communion, which is the foundation and soul of the community of marriage and the family.”

⁵⁶ Ibid., n. 17.

⁵⁷ Cf. GrS, n. 12.

⁵⁸ John Paul II, Encyclical Letter *Veritatis Splendor* (August 6, 1993) AAS 85 (1993): 1133–1228, n. 41. Henceforth as VS; see Andrzej Szostek, *Ku teonomii uczestniczącej. Wolność a prawo w świetle encykliki “Veritatis splendor,”* in Jan Paweł II, “*Veritatis splendor*”. *Tekst i komentarze*, ed. Andrzej Szostek (Lublin: Redakcja Wydawnictw KUL, 1995), 221–34.

⁵⁹ *Rituale Romanum ex decreto Sacrosancti Oecumenici Concilii Vaticani II renovatum auctoritate Pauli PP. VI editum Ioannis Pauli PP. II cura recognitum Ordo celebrandi matrimonium* (March 19, 1990), editio typica altera (Città del Vaticano: LEV, 1991), n. 60.

⁶⁰ GrS, n. 8.

⁶¹ Pontifical Council for the Family, *The Truth and Meaning of Human Sexuality...*, n. 29.

In a mutual personal devotion to each other, the spouses—as the Vatican Council II states—achieve the tightest union: “they are no longer two but one flesh.”⁶² So, if it is true that going beyond each other toward *communio personarum* constitutes the domain of the human spirit,⁶³ then it is also true that this communion unity “in truth and love” is realized by the husband and the wife according to an objective—unitive and procreative—meaning of their masculinity and femininity.⁶⁴ It is how, by expressing it in the possibly shortest way, John Paul II’s “theology of the body”⁶⁵ emphasizes a significant indication of the personalistic-integral vision of marriage—the third (according to Carlo Caffarra) criterion of the formation of juridical anthropology of the “partnership of the whole of life.” Following the definition of the human body as a language/sign expression of a person, comes a fully justified statement that the “language of the body” (“femininity for masculinity,” “masculinity for femininity”) is both a “substance” as well as the very constitutive essence of the matrimonial-family communion of persons.⁶⁶ Naturally, this premise of the appropriate anthropology—based on a fundamental assumption, which states that the human being is a unity of spirit and body⁶⁷—tells us to see in the body a “sacramental sign” of the matrimonial interpersonal communion/communication.⁶⁸ Therefore, it is safe to say that this premise turns out to be a necessary (let us say it directly: key) complement of the image of matrimonial and family *communio personarum*—in an integral depiction: both personalistic and institutional.⁶⁹

⁶² Mt 19, 6; cf. GS, n. 48.

⁶³ Caffarra, *Matrimonio*, 31–33.

⁶⁴ Cf. GrS, n. 8.

⁶⁵ Therefore, it is worth recalling the memorable *Wednesday catechesis* of John Paul II, entitled *Man and Woman He Created Them*.

⁶⁶ Jan Paweł II, *Mężczyznę i niewiastę stworzył ich*, vol. 4: *Sakrament. O Jana Pawła II teologii ciała*, ed. Tadeusz Styczeń (Lublin: Redakcja Wydawnictw KUL, 1998), 70.

⁶⁷ Here, in an interesting exposition Carlo Caffarra establishes that the Cartesian current of contemporary human philosophy falls into a dualism even more radical than the Platonic one. By no means it is about the problem of the negation of physicality (by contrast, nowadays departure from biologism is popular), but about a practical negation of personal value of human body (Caffarra, *Matrimonio*, 39).

⁶⁸ Caffarra, 34–35.

⁶⁹ See Andrzej Pastwa, “Il matrimonio: comprensione personalistica e istituzionale,” *Ius Ecclesiae* 25 (2013): 211–31.

“The Indissoluble Character of Marriage as the Basis of the Common Good of the Family”⁷⁰

A considerable meaning for the Church matrimonial discipline has its foundation on a realistic vision of a human being.⁷¹ Insofar as the Christian anthropology defines *persona humana* as a free and rational subject aimed dynamically toward an extensive development—a subject, despite the imperfection of its nature, capable of making responsible choices, achieving worldly and supernatural objectives by its own effort and with the help of the God’s grace—then (as it was already indicated) the integrality of this depiction transposes directly onto a personalistic image of the canonical marriage. The “essence of matrimony” defined in canons 1055–1057 of the Code of Canon Law and canons 776 and 817 of the Code of Canons of the Eastern Churches—as well as other structural parameters of the *matrimonium canonicum*: “essential properties,” “essential elements,” “essential matrimonial rights and duties”—is reposed upon an assumption of the natural capability of realization of matrimonial vocation by persons of different sex.⁷² The Church legislator, faithful to this assumption, immanently inscribed in the *ius matrimoniale* system the axiom of anthropological realism—emerging in a realistic definition of boundaries and capabilities of the human nature burdened with sin, taking into consideration, in a particular case (a specific person!), the effective help of God’s grace.

Benedict XVI gives this truth a clear expression, when addressing the Roman Rota of 2009⁷³ he makes references to the famous John Paul II’s Rotal allocutions from 1987 and 1988,⁷⁴ proclaims man and woman’s inborn capability of marriage. Did Pope Wojtyła, in his entire teaching, not preach that the man and

⁷⁰ GrS, n. 7.

⁷¹ Cf. Pastwa, *Realism of Personalist Vision*, 351–54.

⁷² Ioannes Paulus II, Allocutio “Ad Romanae Rotae praelatos auditores” (January 27, 1997), AAS 89 (1997): 488–89, nn. 4–5.

⁷³ Benedictus XVI, Allocutio “Ad sodales Tribunalis Romanae Rotae” (January 29, 2009), AAS 101 (2009): 124–28. “It is true that this freedom of human nature, ‘wounded in the natural powers proper to it,’ and ‘inclined to sin’ (*Catechism of the Catholic Church*, n. 405), is limited and imperfect, but it is not thereby unauthentic and insufficient for carrying out that act of self-determination by the parties which is the conjugal covenant, which gives rise to marriage and to the family founded on it,” 127.

⁷⁴ Ioannes Paulus II, Allocutio “Ad Rotae Romanae Auditores coram admissos” (February 5, 1987), AAS 79 (1987): 1453–1459; Ioannes Paulus II, Allocutio “Ad Rotae Romanae Auditores simul cum Officialibus et Advocatis coram admissos, anno forensi ineunte” (January 25, 1988), AAS 80 (1988): 1178–1185.

woman are summoned in the irrevocable covenant of matrimonial love, to, apart from experiencing the joy of “fulfillment,” overcome the inescapable burden and hardship of matrimonial life? Did the Pope of the Family, with full diligence and concern, not teach that it is the way they realize in their marriage—a completely realistic—legal obligation (!) of sacrificial love?⁷⁵

We can ask, therefore, where do the opinions (frequently in the bosom of the very Church), which challenge the truth, that “the law is truly interwoven with life and love as one of the intrinsic obligations of its existence,”⁷⁶ come from? In other words, where do the opinions that call into question precisely the realism of the personalistic canonical doctrine *de matrimonio et familia* come from? This problem is succinctly explained by the papal enunciation from the Letter to Families: “Modern rationalism does not tolerate mystery. It does not accept the mystery of man as male and female, nor is it willing to admit that the full truth about man has been revealed in Jesus Christ.”⁷⁷ Therefore, this peculiar anthropological pessimism is obviously a derivative of the “crisis of truth”⁷⁸—precisely “defined” in *Gratissimam Sane* (in connection with the analyses conducted in the *Veritatis Splendor* encyclical⁷⁹ and the undertone of the *Fides et Ratio* encyclical⁸⁰). Let us spell it out: individualism, settled in our contemporary postmodernist world, exceedingly expansive, all the time winning new “strongholds” in the widely understood culture, constitutes a radical negation of personalism.⁸¹ A bright expression of it is the fact that the human being—in the “revolutionary” anthropological depictions promoted by the fencers of progress (usually supported by huge financial resources and the entire mass media system)⁸²—is devoid of any reference to the

⁷⁵ See Pastwa, “Przymierze miłości małżeńskiej,” 92–110.

⁷⁶ Benedictus XVI, Allocutio “Ad Tribunal Rotae Romanae in inauguratione Anni Iudicialis” (January 27, 2007), 90.

⁷⁷ GrS, n. 19.

⁷⁸ Ibid., n. 13.

⁷⁹ See VS, nn. 28–83.

⁸⁰ See John Paul II, Encyclical Letter *Fides et Ratio* (September 14, 1998), AAS 91 (1999): 5–88, nn. 86–91.

⁸¹ The Letter to Families contains important words on the subject of this “individualistic” threats: “As we know, at the foundation of ethical utilitarianism there is the continual quest for ‘maximum’ happiness. But this is a ‘utilitarian happiness,’ seen only as pleasure, as immediate gratification for the exclusive benefit of the individual, apart from or opposed to the objective demands of the true good. The program of utilitarianism, based on an individualistic understanding of freedom—a freedom without responsibilities—is the opposite of love, even as an expression of human civilization considered as a whole. When this concept of freedom is embraced by society, and quickly allies itself with varied forms of human weakness, it soon proves a systematic and permanent threat to the family,” GrS, n. 14.

⁸² See Andrzej Pastwa, “Mężczyznę i niewiastę stworzył ich.” *Afirmacja osoby ludzkiej odpowiedzią nauk teologicznych na ideologiczną uzurpację genderyzmu* (Katowice: Księgarnia św. Jacka, 2012).

transcendence.⁸³ Only within this context the meaning of Karol Wojtyła's idea becomes perceptible—here I will refer to a paraphrase of the famous words from the *Redemptor hominis* encyclical: Husbands and wives remain beings that are incomprehensible for themselves, their lives are senseless if love is not revealed to them, if they do not encounter love, if they do not experience it and make it their own, if they do not participate intimately in it.⁸⁴

A confirmation of the significance of this papal magisterium is delivered by the research work conducted, among others, within the plane of the matrimonial canonical law. Hence the subject-matter research of one of the most reputable canonists of the 20th century Eugenio Corecco demonstrated that the effective help in accepting the principles of an appropriate anthropology—let us add: perceived through the prism of the original papal "hermeneutics of gift"⁸⁵—constitutes an acceptance a Christological perspective (Christocentric). Indeed in such a perspective (and only in such!) *ordo creationis* and *ordo redemptionis* can harmoniously interweave. Consistently—a restoration of the initial truth about the sacrality of the matrimonial "meeting" takes place, a "meeting" in which the Christ defines the way, in which the person devotes oneself to the second person in the unbreakable covenant, realized by the man and the woman "in the image of God" (Trinitarian analogy).⁸⁶ Allow me to repeat the point included in the book entitled *Matrimonial Love Covenant. John Paul II's idea of canonical marriage*: "Trinitarian interpretation of the matrimonial communion, conducted in the perspective of 'theology of the body' *explicite* reveals the ontologic principle that constitutes the basis of the institution of marriage. This

⁸³ Ioannes Paulus II, Allocutio "Ad Romanae Rotae Iudices" (January 30, 2003), AAS (2003): 394, n. 3; cf. Caffarra, "Matrimonio," 40. The words of the current prefect of the Congregation for the Doctrine of the Faith cardinal Gerhard Ludwig Müller are symptomatic: *La concezione antropologica offerta ai nostri giovani colloca al centro della realtà un uomo e una donna privi di ogni senso trascendente, ridotti quasi ai loro istinti animali, usando la loro libertà senza alcun criterio morale previo. [...] Ritengo che attualmente sia urgente offrire a tutti una riflessione ben fondata sull'esistenza umana nella sua unità indissolubile di corpo e anima, a partire da un'antropologia adeguata. Urge dar conto della nostra speranza!*—Gerhard Ludwig Müller, *La speranza della famiglia* (Roma: Edizioni Ares, 2014), 25–26.

⁸⁴ Cf. RH, n. 10.

⁸⁵ Pope Wojtyła defines the hermeneutics of the gift by the means of a new principle of understanding and translating the theological-anthropological foundation of a person and the matrimonial *communio personarum*, cf. GrS, n. 11; see also Pastwa, "Przymierze miłości małżeńskiej," 32–41.

⁸⁶ See Eugenio Corecco, "Il sacramento del matrimonio: cardine della costituzione della Chiesa," in *Diritto, persona e vita sociale. Scritti in memoria di Orio Giacchi* (Milano: Vita e Pensiero, 1984), vol. 1, 394–95; see more: Andrzej Pastwa, *Istotne elementy małżeństwa. W nurcie odnowy personalistycznej* (Katowice: Wydawnictwo Uniwersytetu Śląskiego, 2007), 338–45.

principle is the matrimonial love, which John Paul II calls the inner principle and permanent power of communion.”⁸⁷

It seems obvious that the acceptance of these objectives of the juridical anthropology of marriage gives life to all attempts of setting the personalistic dimension of marriage against its legal value.⁸⁸ If so, maybe we can go even a step further. Based upon this anthropology, faithfully adapting the conciliar thought, the character of the “irrevocability” of the personal consent⁸⁹ appears—explicitly!—as a direct consequence of the “personalistic norm,”⁹⁰ that is, a standard affirming the dignity of persons in marriage (and family). It is unnecessary to add that according to this idea—with a highlighted bond of justice (and love), so an interpersonal matrimonial relation (*habitus amoris coniugalis*⁹¹), defined in the constitutive act of a mutual gift of two persons (*actus amoris coniugalis*) in their matrimony: masculinity and femininity⁹²—the principle of indissolubility easily “defends” itself against the accusation of inclusion from the outside (otherwise we know that such an accusation could be easily laid against the contractual idea of marriage⁹³).

Such is also the meaning of the aforementioned papal *de matrimonio* magisterium: the indissoluble character of the marriage bond emerges from the very nucleus of the “being of the human person as such.”⁹⁴ Let us say directly af-

⁸⁷ FC, n. 18; Pastwa, “Przymierze miłości małżeńskiej,” 46.

⁸⁸ Ioannes Paulus II, Allocutio “Ad Romanae Rotae praelatos auditores” (January 27, 1997), 488, n. 4; Wojciech Góralski, *Walor prawny małżeństwa i jego wymiar osobowy. Przemówienie papieża Jana Pawła II do Roty Rzymskiej 27 I 1997 r.* JM 2 (1997): 99.

⁸⁹ Cf. GS, n. 48.

⁹⁰ This norm “in its positive form, the person is a good towards which the only proper and adequate attitude is love,” see Wojtyła, *Love and Responsibility*, 41.

⁹¹ Cf. Pastwa, *Prawne znaczenie miłości*, 85.

⁹² GS, n. 48; cf. Javier Hervada, *Studi sull'essenza del matrimonio* (Milano: Giuffrè, 2000), 288–89.

⁹³ Substantiated is the criticism expressed by Joan Carreras, who sees the defeat of the idea of synallagmatic matrimonial contract (*contractus sui iuris*) in a total incapability of integrating—brought into being per contractum—matrimony (*matrimonium in facto esse*) with its essential property: indissolubility, Carreras, II “‘bonum coniugum,’ oggetto del consenso matrimoniale,” *Ius Ecclesiae* 6 (1994): 130–35.

⁹⁴ FC, n. 11. Instructive is the Holy Father’s auto-commentary to this words in the Letter to Family *Gratissimam Sane*, concluded with a sentence, from which the title of this study was borrowed: “The Book of Genesis helps us to see this truth when it states, in reference to the establishment of the family through marriage, that ‘a man leaves his father and his mother and cleaves to his wife, and they become one flesh’ (Gen 2:24). In the Gospel, Christ, disputing with the Pharisees, quotes these same words and then adds: ‘So they are no longer two but one flesh. What therefore God has joined together, let not man put asunder’ (Mt 19:6). In this way, he reveals anew the binding content of a fact which exists ‘from the beginning’ (Mt 19:8) and which always preserves this content. If the Master confirms it ‘now,’ he does so in order to make clear and unmistakable to all, at the dawn of the New Covenant, the *indissoluble character* of marriage as the basis of the common good of the family,” GrS, n. 7.

ter John Paul II: "The total physical self-giving [in the marriage covenant of love—A.P.] would be a lie if it were not the sign and fruit of a total personal self-giving, in which the whole person, including the temporal dimension, is present: if the person were to withhold something or reserve the possibility of deciding otherwise in the future, by this very fact he or she would not be giving totally."⁹⁵ It is thus important to present "*indissolubility* as a good for spouses, for children, for the Church, and for the whole of humanity."⁹⁶ As a result, there is only one possible conclusion: as far as the personalistic idea of marriage appropriately depicts the intrinsic indissolubility of the matrimonial covenant, the formulating of, in the study of canon law, the immanency of this essential attribute, faithful papal magisterium, remains a clear evidence of the fact that this "sacred bond" does not depend on human decisions alone.⁹⁷

It is not surprising that in the doctrinal introduction to the Instruction "*Dignitas Connubii*" (2005) a prominent place is held by the following passage: "In a vision of authentic personalism, the Church's teaching implies the affirmation that marriage can be established as an indissoluble bond between the persons of the spouses, a bond essentially ordered to the good of the spouses themselves and of their children."⁹⁸

In the conclusion of this contemplation it seems right to once again quote Saint John Paul II, who, not without purpose, makes the structural (ethical) principle of love, which constitutes the basis of contemporary theological and legal doctrine *de matrimonio et familia*:

Christ wants to safeguard the holiness of marriage and of the family. He wants to defend the full truth about the human person and his dignity. Only in the light of this truth can the family be "to the end" the great "revelation," the first discovery of the other: the mutual discovery of husband and wife and then of each son and daughter born to them. All that a husband and a wife promise to each other—to be "true in good times and in bad, and to love and honor each other all the days of their life"—is possible only when "fairest love" is present. [...] We see the workings of the Holy Spirit, the source of "fairest love." He has poured forth this love not only in the hearts of Mary and Joseph but also in the hearts of all married couples who are open to hearing the word of God and keeping it. The future of each family unit depends

⁹⁵ FC, n. 11.

⁹⁶ Ioannes Paulus II, Allocutio "Ad Romanae Rotae tribunal" (January 28, 2002), AAS 94 (2002): 341, n. 2. "Marriage 'is' indissoluble: this property expresses a dimension of its objective being, it is not a mere subjective fact. Consequently, the good of indissolubility is the good of marriage itself," 342, n. 4.

⁹⁷ GS, n. 48.

⁹⁸ Pontificium Consilium de Legum Textibus, Instructio *Dignitas connubii* servanda a tribunalibus dioecesanis et interdioecesanis in pertractandis causis nullitatis matrimonii (January 25, 2005), *Communicationes* 37 (2005): 12.

upon this “fairest love”: the mutual love of husband and wife, of parents and children, a love embracing all generations. Love is the true source of the unity and strength of the family.⁹⁹

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⁹⁹ GrS, n. 20.

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Andrzej Pastwa

« Le bien commun du mariage et de la famille » Réflexions juridico-canoniques

Résumé

La proclamation de Jean-Paul II incluse dans *Lettre aux Familles* (1994) disant que l’homme peut exister pour « lui-même » par un don désintéressé de lui-même, et par conséquent se réaliser comme un bien commun : « bien commun à toute communauté humaine » et « bien commun du mariage et de la famille » (nn. 10, 11) constitue la thèse initiale de l’article. C’est bel et bien les derniers propos qui incitent à tenter de transformer la profonde idée théologique du document de pape aux demandes dans le domaine de droit canonique. Voilà celles qui semblent être les plus importantes : (1) il est fort important pour la discipline conjugale liée à l’Église qu’elle soit fondée sur la vision réaliste de l’être humain ; (2) à la base de la doctrine juridico-théologique

contemporaine *de matrimonio et familia* se situe le principe structural (éthique) de l'amour; (3) l'acceptation des principes adéquats de l'anthropologie juridique du mariage démentit toutes les tentatives d'opposer la dimension personaliste du mariage à sa valeur juridique; (4) le caractère indissoluble du mariage constitue le fondement du bien commun de la famille.

Mots clés: mariage, famille, droit canonique conjugal et familial, anthropologie juridique du mariage, caractère indissoluble du mariage, bien commun de la famille

Andrzej Pastwa

"Il bene comune del matrimonio e della famiglia" Riflessioni giuridico-canoniche

Sommario

La tesi di questo articolo è la proclamazione di Giovanni Paolo II nella sua Lettera alle famiglie (1994), in cui l'individuo può esistere "per se stesso" attraverso il dono disinteressato di sé — ed è così che si realizza il "bene comune": "il bene comune di ogni società umana" e "il bene comune del matrimonio e della famiglia" (nn. 10, 11). Sono proprio queste ultime parole che danno luogo al tentativo di trasformare il profondo pensiero teologico del documento papale in proposte di diritto canonico. Le più importanti sembrano essere le seguenti: (1) è di estrema importanza per la disciplina ecclesiastica del matrimonio il fatto di basarla su una visione realistica della persona umana; (2) Il principio strutturale (etico) dell'amore è la base della moderna dottrina teologica e giuridica de matrimonio et familia; (3) l'adozione di adeguati presupposti antropologici del diritto matrimoniale sovverte qualsiasi tentativo contrapporre la dimensione personalistica del matrimonio al suo valore giurudico; (4) il carattere indissolubile del matrimonio è il fondamento del bene comune della famiglia.

Parole chiave: matrimonio, famiglia, diritto canonico matrimoniale e familiare, antropologia giurudica del matrimonio, indissolubilità del matrimonio, bene comune della famiglia

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Sovereign Family

Abstract: The point of departure for the deliberations is the Letter to Families written by John Paul II presenting threats to understanding, existing, and functioning of the family in the contemporary world. The author of the study discusses the problem of sovereignty of the family. He depicts it from a wider point of view of its identity and subjectivity, indicating that these three elementary dimensions of family's existence have impact on its inalienable, fundamental, and universal rights independent of any human authority. For this reason, he analyzes the concepts of identity, subjectivity, and sovereignty of the family, their relationships with each other, their basis which lies in marital covenant, as well as legal and political consequences for the existence of the family within a wider social community.

Keywords: matrimony, family, identity, subjectivity, sovereignty, the rights of the family

Introduction

In 2014, there was an anniversary of issuing Letter to Families *Gratissimam Sane*¹ written by John Paul II, which together with Apostolic exhortation *Familiaris Consortio* constitutes the crowning of Karol Wojtyła's sermons about the family. One more time the shepherd of the Catholic Church recounts the Church's teachings concerning the family. This time he does it in reference to the period which he describes as the time of great crisis, in which the civilization of love is being increasingly threatened. The family is fundamental to the civilization of love. Therefore, a threat to the civilization of love is at the same

¹ John Paul II, Letter to Families *Gratissimam Sane* (February 2, 1994). Henceforth as GrS.

time a threat to the family itself. The pope calls this phenomenon the hazard of civilization. John Paul II sees this hazard especially in agnosticism as far as theory is concerned and in utilitarianism when it comes to taking action. The consequence of utilitarian approach to life is a change in perceiving the human who loses his or her individual character and becomes the object of use, similarly to things. The human being is in danger and so is the fundamental form of social life—the family. From such perspective, a man and a woman become objects for each other, whereas children—an obstacle for parents. In reference to the family, the pope observes, the consequence of such an approach is the situation in which the family becomes “an institution obstructing the freedom of its members.” The hazards indicated by the pope (including also consumerist and anti-birth mentality) contribute to deterioration or even destruction of the unity and stability of the family. In such circumstances, a broken family, instead of being the foundation of the civilization of love, plays a part in strengthening the peculiar anti-civilization in which there is no place for love in the human consciousness. The pope points out that such way of understanding and functioning of the family will inevitably bring about social repercussions.²

Analyzing the atmosphere of the era which is the time of great crisis due to which the family as “an *institution* fundamental to the life of every society” is in decline the pope poses the following question: “What does the family as an institution expect from society? First of all, it expects a *recognition of its identity* and an acceptance of its *status as a subject in society*.” The first sign by means of which the pope defines the way in which the family functions is its sovereignty.³ Identity, subjectivity, and sovereignty are the three elements which are characteristic of the family as an institution and which, in the teaching of Church about the family, constitute its unshakeable foundation. The above notions are well-known in present times but their meaning or attributes significantly differ from those emphasized by the Christian thought. It is also noticed by John Paul II who states that the crisis of the present era is above all the crisis of truth, at the basis of which is the crisis of concepts. Thus he asks: “Do the words [...] really convey their essential meaning?”⁴

² GrS, n. 13.

³ GrS, n. 17.

⁴ GrS, n. 13.

Subjectivity, Identity and Sovereignty of the Family

Karol Wojtyła discussed the problem of subjectivity of the person in one of his meaningful essays,⁵ namely, he expressed his belief that the Aristotelian tradition defining the person in terms of a substance, potential, and rationality needs supplementing. Wojtyła complements the cosmological view of the human being with personalistic dimension describing the person in terms of subjectivity, which is demonstrated in self-presence, inwardness, and giving oneself to another person. Wojtyła believes that understanding the person in his or her full existence lies in deep exploration of this person's subjectivity. Embracing the human being in relation to his or her subjectivity shows the differences between the human and other beings. In one's subjectivity the person should not be affected by what happens beyond one's freedom. Otherwise, the human will be treated like an object and thus will lose his or her subjectivity. Treating the person like an object proves that the human being acting in this way is not yet his or her true 'self' that is open for the communion with 'you.' Romano Guardini calls such an individual the "utilizing and struggling subject," since he or she engages in what he or she owns or knows, not in relation to his or her own self. Only when the human being faces another person understood as 'you,' does the human become aware of his or her own 'self,' reveals and opens himself/herself for another human being.⁶

Individual subjectivity is not the only possible form of its existence. In the Letter to Families, John Paul II talks about social subjectivity which is based on the family. It is a subject to a much greater extent than any other community, such as the nation, state or international organizations. These are given subjectivity by human beings, including families. Whereas the family relies on first and foremost 'being together,' which accounts for the essential well-being of the married couple and which the pope describes as the well-being of subjectivity.⁷ Max Scheler claims that collective subjectivity generates, similarly to individual subjectivity, the inner life of the people creating the community. In his view, a collective person is true and authentic in the likeness of an individual person. This kind of subjectivity is characteristic of

⁵ Karol Wojtyła, ed., "Podmiotowość i "to, co nieredukowalne" w człowieku," in *Osoba i czyn oraz inne studia antropologiczne* (Lublin: TN KUL, 1994), 433–34.

⁶ Romano Guardini, ed., "Świat i osoba. Próby ujęcia chrześcijańskiej nauki o człowieku," in *Koniec czasów nowożytnych. Świat i osoba. Wolność, łaska, los* (Kraków: Znak, 1969), 187–88.

⁷ GrS, n. 15.

a nation and Church.⁸ John F. Crosby disagrees with this opinion contending that collective persons are only persons in analogous sense. He does not negate collective subjectivity but he points out that the community in its subjectivity cannot determine its existence in subjective freedom, it cannot exist similarly to individual persons. Collective subjectivity exists in individual subjectivities and only thanks to them, but it cannot exist in them in the same way they exist in individual persons.⁹

In the Letter to Families, John Paul II goes beyond philosophical definitions of collective subjectivity. He draws our attention to the fact that subjectivity is connected with the identity of the married couple and the family, since it is through matrimony that a man and a woman create with each other the unity of the whole life, one “us.”¹⁰ Since that time all decisions are made by one “us” and both sides take co-responsibility for this new social entity. In marriage, decisions are not taken individually but they are joined into one common decision. It is not the unity based on “me” and “you,” but on “us.” The spouses do not function independently, but still being individual subjects they form a new decision-making subject, a new authority body. The Christian idea of matrimony complemented this personalistic view with the *novum* of divine provision. Tying the knot by a man and a woman is the moment they become one body instead of two separate ones (Mk 10:8). This is the foundation of subjectivity of marriage. In his Letter to Families, John Paul II asserts that “the family is *much more* than the sum of its individual members [...] for this reason its ‘status as a subject’ [...] gives rise to and calls for certain proper and specific rights.”¹¹

Therefore, the family is the foundation of every other collective subjectivity in a specific and most conspicuous way. Subjectivity of a nation or a state is “at least indirectly conditioned by the existence of the family.”¹² That is why, “the definition of the rights and duties of the ‘greater’ society with regard to the family is an extremely important and even essential issue.”¹³

Identity is a notion meaningful for many theories in which the subject of research is the human being, community, citizen, nation or culture. Philosophical depiction of identity, in which identity means “being the same person” and deals with defining “what existence is,” has a special meaning for the legal definition of the person. Both these dimensions emphasize unity of the person in an ontological sense (being the same person), the consequence of which is responsibility for his or her actions. Thus, the person not only has identity,

⁸ Max Scheler, *Formalism in Ethics and Non-Formal Ethics of Values* (Evanston: The Northwestern University, 1973), 519–60.

⁹ John F. Crosby, *Zarys filozofii osoby*, trans. Beata Majczyzna (Kraków: WAM, 2007), 143.

¹⁰ GrS, n. 17.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

which is determined by the ability to think back and awareness of the actions whose perpetrator is one's true 'self' (the unity of consciousness), as well as responsibility for one's deeds, but the person is identical as long as he or she is defined as a unity.¹⁴ To describe the unity of a man, John Locke introduces the term of the person, pointing out that personal unity is the unity of a particular person, which is different from the sum of its parts.¹⁵

The concept of identity with reference to people forming national and international community, allows their individualization with a view to defining their status, including, above all, legal capacity and capacity for legal action.

Legal concept of identity might also be an area of interest for theology. John Paul II, in the Letter to Families, emphasized that the identity of a person first of all consists of "the *capacity to live in truth and love* [...], the need of truth and love as an essential dimension of the life of the person."¹⁶ Life in truth and love opens the person to life in communion that is an interpersonal relationship which exists between "me" and "you," leading a man and a woman towards matrimony. Simultaneously, it opens this relationship to a larger union, in other words, one "us," thus giving rise to the family.¹⁷

Theological dimension of family life in truth and love, which originates from the trinitarian "Us,"¹⁸ together with philosophical definition of being always the same regardless of changing conditions, aims at constant persistence in obligations ensuing from marriage vows taken with responsibility and awareness. Otherwise, the family loses its identity and is exposed to breakdown. Identity of the family, based on responsibility of its members, develops its permanence and stability.

Sovereignty is the concept which is most often used in reference to the state. It means independence and self-reliance, which are expressed in territorial possession, as well as independence of state authorities from other countries,¹⁹ which results in independence within the scope of all laws. In case of limiting independence to only several laws rather than of sovereignty, we talk about autonomy or limited sovereignty.²⁰ The notion of sovereignty, except for being used in reference to the state or its authority, is also used in relation to a person or society. The idea of a nation united into a political body as a sovereign political authority, which was described in the Declaration of the Rights of Man and

¹⁴ Cf. R. Ferber, *Podstawowe pojęcia filozoficzne*, vol. 2 (Kraków: WAM, 2008), 81.

¹⁵ Cf. John Locke, *Rozważania dotyczące rozumu ludzkiego* (Warszawa: PWN), 1955, II, 27, § 26.

¹⁶ GrS, n. 8.

¹⁷ GrS, n. 7.

¹⁸ Ibid.

¹⁹ Janusz Filipkowski, *Suwerenność*, in *Encyklopedia Katolicka*, ed. Edward Gigilewicz (Lublin: TN KUL, 2013), vol. 18, col. 1238.

²⁰ Mieczysław Albert Krąpiec, *Suwerenność — czyja?* (Lublin: KW KUL, 1996), 42.

of the Citizen, in the 19th century yielded to the theory of sovereignty thus giving priority to the general public as an independent whole consisting of citizens who constitute its dependent parts.²¹ The idea of priority of the person and the state goes back to antiquity but in the present day the concept of sovereignty is above all associated with the state represented by its authorities. It is generally acknowledged that the state has precedence over sovereignty of the person, who is a part of a greater whole. It is from the state that the person receives a determined social and civil status, as well as the rights he or she can exercise. However, it is not equal with general acceptance of such a concept, an example of which is widespread international activity for human rights.

Regardless of involvement in propagating human rights, the Christian view of the human being together with philosophical personalistic approach emphasize the primacy of sovereignty of the person, which next grants the rights of the sovereign to the state. The human being as an independent, self-conscious, free, substantial, and real entity precedes the state, which is merely a group of citizens connected with one another by a multitude of specific relationships. Numerous individuals creating the community do not complement the way of life of the person but enable or hinder his or her activities.²² Priority of an individual over the state results from characteristic features of a human being who experiences his/her «me» in everything he/she does. An individual has control over himself/herself, possesses himself/herself, decides about himself/herself by shaping his or her personal profile. Sovereignty of an individual has its foundations in the act of this person's decision, which at the same time is a model for shaping every social sovereignty.²³ Sovereignty of an individual becomes apparent while he or she is shaping, irrespective of anybody, the acts of free cognition, love, and independent decision.²⁴

Cognition in love and making an independent decision to give oneself and fully accept the other person in wedlock forms the basis of sovereignty of the family and the ensuing rights. It is not just a contract or social agreement, but an act of covenant, which makes a man and a woman become one body,²⁵ while bringing into it the elements of their own personal sovereignty. Therefore, the family is not an entity with limited sovereignty or one having only some autonomy, but it constitutes an entirely sovereign entity.

There is a strong relationship between three signs determining the status of the person and the family. The human being in his or her self-possession, self-control, and self-determination—as it was described by Karol Wojtyła—is

²¹ Filipkowski, *Suwerenność*, col. 1239.

²² Krapiec, *Suwerenność — czyja?*, 48.

²³ *Ibid.*, 51.

²⁴ *Ibid.*, 19.

²⁵ Tomasz Gałkowski, "The Matrimonial Covenant as the Nature of Things (of Marriage)," *Ecumeny and Law* 1 (2013): 79–92.

a sovereign, and having his or her own identity being as far as he or she acts self-consciously and responsibly. What is more, one is an identity in oneself as long as one embraces oneself as unity. The consequence of this personal identity is the legal definition of an individual in his or her social life.

Individual subjectivity gains a new dimension in marriage and family life, owing to the fact that the communion of “me” and “you” becomes the community of one “us,” that is, one body. The formation basis of this one body is the matrimony through which the sides give themselves to each other and accept each other. In marriage, differently than in other social relationships, we observe mutual interpenetration (indwelling) of the Trinitarian persons. It is not a relationship joined by external knots created for the sake of actions taken together. The marriage knot comes from the soul of the persons by the act of giving and accepting, characteristic of a human being. Only an authentic and sovereign authority is capable of self-creation into a relational existence (co-existence) forming from a man and a woman an absolute “biographical co-identity”²⁶ independent of external forms of influence on its creation. That is why, only a relationship formed by a man and a woman on the basis of a free decision-making act, independent of any external influence on the sides of the marriage pact can be accepted as a valid establishment of a community of spouses.

Marital Covenant as the Foundation of Rights and Responsibilities of Spouses and the Family

Marital covenant formed as a result of free and sovereign decision of a man and a woman makes them become a community of the whole life. Thus, it differs from any other relationship in which the agreement to live together is relative and to some extent limited. It results in the relation having a temporal character and being open to cessation. Marriage which comes into being as a consequence of a free decision of a man and a woman is an indissoluble, faithful, and fertile community of love and life. The decision about self-establishment of this community is inseparably linked with the rights and duties which result from the new way of existence of the couple. The sides become a gift (being “yours”) and, at the same time, an obligation (being “for you”) for each other. What emerges then is a biographical joint-identity, which is based on being together, yet not

²⁶ Pedro-Juan Viladrich, “Rodzina suwerenna,” *L'Osservatore Romano* (Pol. ed.) 18 (1997) 10: 53.

limited to it. Since then the vows of love and faithfulness transform a free gift of love for another person into a duty to love him or her.²⁷ The spouses commit themselves to love, which from then on becomes the meaning of their life. Love, being a free gift, merges into the order of justice.²⁸ Christian love of one's neighbor gains a new dimension directed at the chosen person and makes two people become one body since the moment they agree to marry each other.

In the nature of the duty of love and ensuing constant interpenetrating of two people joined by matrimony, there is a following belief—that which exists will exist and has to exist. What has to be present will be present. At the same time, it reflects the confidence in the continuity of such condition. Talking about the necessity of the future existence of something we refer to absolute necessity, in accordance with which we accept the superiority of existence over non-existence, the superiority of permanence over relativity. Therefore, marital community exists as a value which, since it is recognized, requires asserting the obligation of existence. The necessity to persist makes present existence become future existence. This necessity (duty) indicates a certain continuity of existence, the fact that it cannot emerge without destroying that which exists now. That is what represents the identity of marriage and family. Otherwise, such a situation would demand replacing something that exists with something that does not. The duty resulting from a free gift of love refers to the way marital community exists, then to the way it functions, to the obligation of taking a specific form. What is created between the spouses is the actual order of justice, whose focal point is mutually due love and ensuing marital assets. Only this kind of relationship is the basis for creation of the family, whose members participate in conjugal love from which they obtain the form of existence.²⁹

²⁷ “We thus come to the very heart of the Gospel truth about *freedom*. The person realizes himself by the exercise of freedom in truth. Freedom cannot be understood as a license to do *absolutely anything*: it means a *gift of self*. Even more: it means an *interior discipline of the gift*. The idea of gift contains not only the free initiative of the subject, but also the aspect of *duty*” (n. 14).

²⁸ Viladrich, “Rodzina suwerenna,” 55.

²⁹ Tomasz Gałkowski, *Prawo-Obowiązek. Pierwszeństwo i współzależność w porządkach prawnych: kanonicznym i społeczności świeckiej* (Warszawa: Wydawnictwo Uniwersytetu Kardynała Stefana Wyszyńskiego, 2007), 54–57.

Political and Legal Consequences of Sovereignty of the Family

The identity of the family, which is rooted in marriage, is the foundation for determining its sovereignty. Identity allows for a definition of the family in legal terms, its legal capacity, and capacity to perform acts in law. Legal capacity and capacity to perform acts in law can become objects of usurpation on the part of the state, which would mean that sovereignty of the family is not accepted. Undoubtedly, the state regulates a number of matters concerning the family. Yet, there remain some issues resulting from the very nature of the conjugal pact and the new social entity. This situation may lead, and in fact it does—which is pointed out by John Paul II in the Letter to Families—a conflict between two sovereign forms of existence, two subjects that strive for common good. The common good for both sovereign entities is always the human being in his or her internal development, by which he or she realizes the acts of cognition, love, and creativity in interpersonal relations. The sovereignty of two entities—the family and the state—expresses their particular aims which are achieved by their activities. The co-existence of two sovereign entities is only possible on condition that the sovereign rights of the two communities are respected by accepting free decision-making acts that determine their conduct. Establishing harmonious relations between the family and the state requires certain directives and theories concerning, for instance, the rudiments of upbringing, education, protection of the life and health of citizens, job policy,³⁰ which will provide justified solutions. The areas of sovereignty of the family and the state are distinguished due to concern for the common good as an aim of individual activity of the person. Generally speaking, the domain of the family includes everything that is connected with personal, intellectual, moral, and religious development. The state should exercise sovereign control over the means enabling the family to achieve their aims. Enabling the use of adequate resources and their fair distribution according to which each family is entitled to is achieved by social and authoritarian decisions. The state remains a sovereign in this area, respecting sovereignty of the family. Usurpation or alienation of the resources that the family is entitled to by the state is the act of violating its sovereignty.³¹

The Church, proclaiming the truth about the identity and sovereignty of the family, at the same time, points at the family as a social subject. This fact has its consequences which are directed at national and international organiza-

³⁰ GrS, n. 17.

³¹ Krapiec, *Suwerenność — czyja?*, 52–53.

tions as postulates. In the first place, in the political and legal field one should mention the postulate of acceptance of the requirements resulting from justice, which are the outcomes of the ensuing marital and generational knot between family members. Requirements of justice existing inside the family need to be accepted since, otherwise, what will follow is an act of injustice towards the existing social subject. Recognition of the family as a social subject means acknowledging the elementary rights which stem from it as an independent source of authority.³² These rights are not granted by any other authority. Accepting such a view would simultaneously mean recognizing the fact that the family is created by external factors, whose consequence would involve adopting the belief that legal subjectivity of the family would be formed the moment its rights are established. Apart from acceptance, one should emphasize the postulate of recognizing the family in its true identity, which is the foundation of its sovereignty. At the same time, other forms of quasi-family life should be rejected as contributing to the loss of family's identity and, in consequence, to a false image of a human being, as well as dehumanization of the society.³³ The view of the person who deprives an individual of his or her human features, depicting him or her as a product of the evolution of forces of nature and society, created by forms influencing an individual from the outside, takes away this person's openness. Such depiction of a human being also deprives one of the purpose which he or she has in himself/herself and makes him/her an instrument subordinate to some other sovereign authority. The society—state would be the subject shaping both human existence and consciousness. In this situation an individual becomes a useless entity, a tool to be used and thus ceases to be a purpose in itself. John Paul II protests against such an approach talking about civilization of things threatening civilization of love.³⁴ The third element which requires highlighting was included in the Charter of the Rights of Family. The Church not only insists that the rights of sovereign family should be acknowledged and respected but also points out at the obligation of countries and international organizations to do their best in order to provide political, economic, social, and legal assistance which is necessary to strengthen the unity and stability of the family. The aim of such help is enabling the family to fulfill its specific objectives.³⁵ Assistance of the state directed at the family results from the interrelationship between the two existing sovereign entities. The family striving to achieve particular aims does not have resources such as the state. Nevertheless, the state plays an ancillary role towards the family. John Paul II indicates the role of the state, which—when it comes to the family—should be driven by the principle of subsidiarity, that is, “whenever the family

³² Viladrich, “Rodzina suwerenna,” 52.

³³ *Ibid.*, 52–53

³⁴ GrS, n. 13.

³⁵ *Charter of the Rights of Family*, Preamble, n. I.

is self-sufficient, it should be left to act on its own; an excessive intrusiveness on the part of the State would prove detrimental, to say nothing of lacking due respect, and would constitute an open violation of the rights of the family. Only in those situations where the family is not really self-sufficient, does the State have the authority and duty to intervene.”³⁶

The Rights of the Family Ensuing from its Sovereignty

The family, which is a sovereign social subject, has its rudimentary rights. These rights result from the communion character of the individuals the family consists of. Marital and family community is the environment in which people who create it, through sovereign decisions based on the truth of matrimony, pursue their self-realization. Therefore, the foundations of the rights of the family are the rights of the person. Hence, as was written by John Paul II, “rights of the family are closely *linked to the rights of the person*.”³⁷ The rights of the family constitute a special group of the latter ones. Realization of the rights of the person and the family complement each other. There is an organic link between them. Violating the rights of the person will simultaneously result in the violation of the rights of the family and vice versa.

Among the rights that the family exercises as a sovereign entity, John Paul II highlights those which directly concern the family (e.g. the right to bring up one’s own children), others concern the family indirectly as they stem from basic rights of the person. However, the rights of the family cannot be treated as a mathematical sum of the rights of the person “[...] family is *much more* than the sum of its individual members. It is a community of parents and children, and at times a community of several generations. For this reason, its “status as a subject” [...] gives rise to and calls for certain proper and specific rights.”³⁸ The rights of the family should be protected and ensured by law.

The rights, characteristic of a sovereign family, were expressed in the Charter of the Rights of Family from the year 1983. These rights are fundamental and inalienable in character. This means that no family can get rid of them and no authority can deprive the family of these rights. The foundation of these rights lies in natural matrimony, which the Creator made an inherent part of every

³⁶ GrS, n. 17.

³⁷ Ibid.

³⁸ Ibid.

person's heart. Moreover, these rights are universal. They do not concern only Catholic families but refer to each and every family.³⁹

In each article of the Charter of the Rights of the Family, after a general wording of a given right, it is defined in further details in relevant subsections. The document mentions the following rights (in their general form): the right of every human to the free choice of their state of life and thus to marry and establish a family or to remain single (art. 1); the right to contract the marriage exclusively by free and full consent duly expressed by the spouses (art. 2); the right of the spouses to found a family and to decide on the spacing of births and the number of children to be born (art. 3); the right to respect and protect the human life absolutely from the moment of conception (art. 4); the original, primary, and inalienable right of the parents to educate their children (art. 5); the right of the family to exist and to progress as a family (art. 6); the right of the family to live freely its own domestic religious life under the guidance of the parents, as well as the right to profess publicly and to propagate the faith, to take part in public worship and in freely chosen programs of religious instruction (art. 7); the right of the family to exercise its social and political function in the construction of society (art. 8); the right of the family to be able to rely on an adequate family policy on the part of public authorities in the juridical, economic, social, and fiscal domains, without any discrimination whatever (art. 9); the right of the family to a social and economic order in which the organization of work permits the members to live together, and does not hinder the unity, well-being, health, and the stability of the family, while offering the possibility of wholesome recreation as well (art. 10); the right of the family to decent housing, fitting for family life and commensurate to the number of the members in a physical environment that provides the basic services for the life of the family and the community (art. 11); the right for the families of migrants to the same protection as that accorded to other families (art. 12).

Conclusion

Due to threats to the family in present day and time, John Paul II in the Letter to Families reminds us the teaching of Church concerning the fundamental form of social life, that is, the family. In reference to the nation, state or international organizations, he shows the family as a sovereign social subject endowed with identity. These three dimensions of the family prove that it has fundamental,

³⁹ Elżbieta Szczot, *Ochrona rodziny w prawie Kościoła Łacińskiego* (Lublin: KUL, 2010), 83.

inalienable, and universal rights, which cannot be violated by any other authority. The Church insists that they should be accepted, recognized, ensured, and protected, pointing out at the forms of co-operation of every community with the family, which is its foundation.

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Tomasz Gałkowski

Une famille souveraine

Résumé

Le point de départ pour les réflexions est la *Lettre aux Familles* de Jean-Paul II où le pape présente les menaces pour la compréhension, l'existence et le fonctionnement de la famille dans le monde contemporain. L'auteur de l'article aborde la question de la souveraineté de la famille.

Il la situe dans une perspective plus large de son identité et de sa subjectivité tout en dénotant que ces trois dimensions essentielles de l'existence de la famille influencent ses droits incessibles, fondamentaux et universels qui ne dépendent d'aucun pouvoir humain. C'est bel et bien dans cet objectif qu'il analyse les notions de l'identité, de la subjectivité et de la souveraineté de la famille, leurs relations mutuelles, leur fondement se trouvant dans l'alliance conjugale et les conséquences juridico-politiques pour son existence dans le cadre d'une communauté sociale plus large.

Mots clés : union conjugale, famille, identité, subjectivité, souveraineté, droits de la famille

Tomasz Gałkowski

La famiglia sovrana

Sommario

L'analisi della Lettera alle famiglie di Giovanni Paolo II rappresenta il punto di partenza, dove egli espone le minacce relative alla comprensione, all'esistenza e al funzionamento della famiglia nel mondo moderno. L'autore del lavoro affronta la questione della sovranità della famiglia. Pone la sua identità e la sua soggettività in una prospettiva più ampia, indicando che queste tre dimensioni basilari dell'esistenza della famiglia influenzano i suoi inalienabili, fondamentali e universali diritti, indipendenti da qualsiasi autorità umana. A tale scopo, esamina la nozione di identità, di soggettività e di sovranità della famiglia, le loro relazioni reciproche, la loro base che si trova nel patto coniugale e le conseguenze giuridico-politiche della sua esistenza nell'ambito di una comunità sociale più ampia.

Parole chiave: Legame matrimoniale, famiglia, identità, soggettività, sovranità, diritto familiare

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The Significance of the Canonical Form of Marriage

Abstract: The paper offers arguments for the canonical form of contracting marriage *ad validitatem matrimonii* which has been obligatory since the Council of Trent.

Responding to critique and postulates for abolishing the obligatory character of the canonical form, the Author presents its strict ecclesiastical significance. In the face of the secularization of marriage, the canonical form of contracting marriage should allow the Church not only to exercise church jurisdiction over the marriage, but, first of all, to be a tool of testimony about the sacramentality of marriage and the guarantee of authenticity of the matrimonial sign towards both the future spouses and, *ad extra*, the world.

Keywords: canon law, marriage, canonical form

Introduction

In the Letter to Families *Gratissimam Sane*, Pope John Paul II, in indirect and rather a descriptive way, referred to the canonical form of marriage, underlining that the prospective spouses take their promises “before God and his Church” as the celebrant reminds them before they exchange their matrimonial consent. “Those who take part in the rite are witnesses of this commitment, for in a certain sense they represent the Church and society, the settings in which the new family will live and grow.”¹

¹ John Paul II, Letter to Families *Gratissimam Sane* (February 2, 1994). Acta Apostolicae Sedis [AAS] 86 (1994): 868–925, n. 10.

The paper attempts to present the canonical form of marriage in social and ecclesiastical dimensions, without entering into particular formal and legal problems (like, e.g., the function of “qualified” witness, other witnesses, faculty to assist at marriage, etc.). The article concentrates on the significance of the canonical form of marriage as the way of recognizing marriage in society.

It seems that today the obligation of the form in question *ad validitatem* of marriage is challenged. Contracting marriage is sometimes treated as a formality that offers nothing important for reality of the marriage. Sometimes the form is called “a red tape” or “just a piece of paper.” It happens that instead of admitting momentousness of marriage, one speaks only about “legalization” of the relationship that has already existed. Definitely, the canonical form of marriage should be more appreciated and the reflection on it should be deepened.

What is the Canonical Form of Marriage?

The canonical form of marriage, as regulated by can. 1108 § 1 CIC,² is a legally defined way of manifesting the matrimonial consent. Although the marital consent is the cause that brings the marriage into being, it must be according to the church legislator’s will “lawfully manifested.”³

The canonical form of marriage must not be identified with the liturgical form of marriage. The latter contains the ceremonies or the rites, and is defined in the liturgical books.⁴ It can assume various shapes—in “Ordo celebrandi Matrimonium” of the Roman rite one can find a number of rites to choose from, and, what is more, the rites can vary in different regions according to the adaptations made by the local Episcopal Conferences.

The canonical form of marriage must not be confused with the form of the sacrament of marriage—the canonical form consists of the actions prescribed by the law necessary for the matrimonial consent to be legally valid. The form of the sacrament is the marital consent of the prospective spouses. The con-

² Can. 1108–§ 1. Only those marriages are valid which are contracted in the presence of the local Ordinary or parish priest, or of the priest or deacon delegated by either of them, who, in the presence of two witnesses, assists, in accordance with the rules set out in the following canons and without prejudice to the exceptions mentioned in cann. 144, 1112 § 1, 1116, and 1127 §§ 2–3. § 2. Only that person who, being present, asks the contracting parties to manifest their consent and in the name of the Church receives it, is understood to assist at a marriage.

³ Can. 1057 § 2 *Codex Iuris Canonici*. Hereafter as CIC.

⁴ See can. 1119 CIC.

sent is the manifestation of the mutual giving and accepting of a man and a woman.⁵

Generally speaking, the form of a legal act, that is, a marriage contract, is a legally prescribed way of declaration of intent. This rule is accepted by Polish law. The intention of a person who is performing a legal act may be expressed by any behavior of that person which manifests his intention sufficiently.⁶ Still, some of the provisions of the Polish law require a special form to perform some legal acts, for example, the written form of a declaration of intent, the written form with an officially certified signature or date, etc. Polish law connects specific legal effects with the lack of the defined form of the declaration of intent (invalidity, lack of the specified effects of a legal act, lack of evidence of the legal activity).⁷

In case of the canonical form of marriage, it must not be perceived in a broad sense, that is, in the sense of the form necessary for manifesting and declaring the intent in law (the intent must be expressed somehow to be the object for the legal regulation). The form of contracting marriage must not be treated only as “pure formality”⁸—even if the requirement is *ad validitatem matrimonii*—because the sense of the canonical form in the ecclesiastical reality has a deeper meaning.

It must be noticed here that the regulations of the canonical form of marriage in church law do not come from the Divine law, but from the Church’s law. The requirements of the natural law are freedom from any impediment that comes from the law in question and the matrimonial consent without any defects. Natural law does not require that marriage be contracted in some public form.⁹

For centuries—up till the Decree *Tametsi* of the Council of Trent (1563)¹⁰—in canonical legal order, there was no obligation of observing any special form of contracting marriage *ad validitatem*. The Church, from the beginning, has recognized the matrimonial consent as the efficient cause, and has paid no attention

⁵ See Federico Rafael Aznar Gil, *Derecho matrimonial canónico*, vol. III: *Cánones 1108–1165* (Salamanca: Publicaciones UPSA, 2003), 14–15, ft. 1. For more on the form of the sacrament of marriage, see Zbigniew Janczewski, “Materia i forma sakramentu małżeństwa,” *Ius Matrimoniale* 18 (2013): 7–23.

⁶ See art. 60 of the Polish Civil Code.

⁷ See Teresa Mróz, “Forma czynności prawnej,” in *Wielka Encyklopedia Prawa*, ed. B. Hołyst (Warszawa: Prawo i Praktyka Gospodarcza, 2005), 220–21.

⁸ See Enrico Vitali, Salvatore Berlingò, *Il matrimonio canonico* (Milano: Giuffrè, 2003), 113.

⁹ See Francesco Bersini, *Il diritto canonico matrimoniale. Commento giuridico-teologico-pastorale* (Torino: Elle Di Ci, 1983), 118.

¹⁰ See Council of Trent, Session 24 (November 11, 1563), Canons of the reform of marriage, in Heinrich Denzinger, *Enchiridion symbolorum, definitionum et declarationum de rebus fidei et morum* (Bologna: Edizioni Dehoniane, 1995), 740–41.

to the formal requirements, and has accepted the form of contracting marriage which was used at that time and in different countries. It should be mentioned that the Church always insisted that the contracting of marriage should be accompanied by a priest's blessing.¹¹ Roman law, which did not require fulfilling any special formalities for the validity of marriage, but only the will of staying in marriage, had a considerable influence on the canonical regulations in this matter.

Despite the polemics, which accompanied the enactment of the canonical form as the necessary condition for validity of marriage,¹² and the difficulties involved in implementation of the decree of the Council of Trent,¹³ the provisions about the canonical form had a huge impact on the discipline of the Church in the following centuries.

In the face of the Church's jurisdiction over the marriages being challenged during the Reformation period, formalization of the manifestation of the matrimonial consent and the requirement that the marriage be contracted publicly, *in facie Ecclesiae*, under the sanction of invalidity, could be seen as the optimal means for the defense of the canonical marriage and the jurisdiction of the Church over the sacrament.

Hazard of too Formal Presentation of the Canonical Form

Requirement of the canonical form produces the danger of understanding marriage as a bond whose nature is only legal, because it was contracted according to law. In this perspective, marriage differs from the concubinage only because there was a ceremony that made the cohabitation between a man and a woman legal, and their sexual intercourses, until then sinful, became morally acceptable.¹⁴

This understanding of marriage causes that what is put in the first place is not the matrimonial consent, which is *causa efficiens* of marriage, but the form

¹¹ See more Anna Tunia, "Kształtowanie się kanonicznej formy zawarcia małżeństwa," *Roczniki Nauk Prawnych* 18 (2008): 129–59, n. 1.

¹² See Jean Gaudemet, *El matrimonio en Occidente* (Madrid: Taurus Humanidades, 1993), 330–33.

¹³ See Tunia, *Kształtowanie się kanonicznej formy*, 136.

¹⁴ For a critical opinion about it, see Pedro-Juan Viladrich, *Agonía del matrimonio legal. Una introducción a los elementos conceptuales básicos del matrimonio* (Pamplona: EUNSA, 1984), 119–20.

of contracting the marriage—marriage is legally contracted only when a priest or a deacon with proper faculty assists at the ceremony.

In this sense, one can comprehend contracting marriage as only “a mere formality,” or call the marriage “just a piece of paper”—what is, to a certain extent, understandable. “Formalism and lawfulness constitute today two big smokescreens, which make perceiving the genuine nature of marriage very difficult.”¹⁵

The picture of marriage as interpersonal reality is being obscured by the formal and bureaucratic aspects of it. Aversion to the latter—especially when a legally established relationship designated as “marriage” is not a true marriage—turns into a critique of marriage itself.¹⁶

Meanwhile the legal dimension of marriage does not emerge from the way it was contracted, but from the fact that a man and a woman who are married are in the relation of justice: they have rights and duties, they are obliged to certain behaviors. Marital love (understood not as the reality of affection, emotion, but as the will of doing good for the spouse) becomes the obligation. The spouses, who mutually give and accept one another, not the provisions of law or the form of celebration of marriage, play the central role in contracting marriage, and they are exclusive creators of the bond.¹⁷ The canonical form of marriage is not a *causa efficiens* of marriage; it is only a requirement for its validity.¹⁸ It does not mean that the canonical form is deprived of its importance or proper sense.

To interpret the sense of canonical form of celebration of marriage one must, first of all, realize that the marriage is not a ceremony or life experience, but it is an interpersonal reality of a man and a woman who are contracting marriage. Those to be married want not so much to be called “the spouses” and “to live like the spouses” as “to be the spouses.” This is why the ceremony of entering into marriage, regardless the ceremonial aspects, if deprived of the element of giving and accepting one another as a mutual gift, would not be the sign of initiating the marriage, but rather of some kind of a fake marriage.¹⁹ Every legal regulation of the way of entering into marriage is just a secondary

¹⁵ Viladrich, *Agonía del matrimonio legal*, 119.

¹⁶ See Viladrich, *Agonía del matrimonio legal*, 121–22. See also Ginter Dzierżon, “Funkcje formy kanonicznej w kanonistycznym systemie prawa małżeńskiego,” *Ius Matrimoniale* 7 (2002): 114–15.

¹⁷ See Miguel Ángel Ortiz, “Forma canónica del matrimonio,” in *Diccionario General de Derecho Canónico*, ed. Javier Otaduy, Antonio Viana, Joaquín Sedano, vol. IV (Pamplona: Thomson Reuters Aranzadi, 2012), 64.

¹⁸ Miguel Ángel Ortiz, ed. “La forma canonica quale garanzia della verità del matrimonio,” in *Ammissione alle nozze e prevenzione della nullità del matrimonio* (Milano: Giuffrè, 2005), 142.

¹⁹ See Ortiz, *Forma canónica*, 64.

causa efficiens comparing to the natural reality, which is to be respected by the legislator.²⁰

And although the act of contracting marriage, that is, the act of manifesting the will for marriage (matrimonial consent), is one of the most personal decisions taken by a person during his or her life, many provisions of canon law protect the right to freedom and absolute self-determination of the future spouses whose consent cannot be supplied by any human power.²¹ The act in question is not only the subject of interest of the two persons who are entering marriage, but it also concerns other communities: the society, the community of the Church, and the family. As one can read in the Apostolic exhortation *Familiaris Consortio*: “Marriage [...] is not an event that concerns only the persons actually getting married. By its very nature it is also a social matter, committing the couple being married in the eyes of society.”²² The act of celebrating marriage causes that a man and a woman are being perceived and defined as a husband and a wife—the spouses.

Marriage as an Ecclesial Reality

Catechism of the Catholic Church, justifying the necessity of the canonical form of marriage, indicates that the presence of the priest or the deacon, as well as the two witnesses during the ceremony “visibly expresses the fact that marriage is an ecclesial reality.”²³ John Paul II, in His address to the Tribunal of Roman Rota on January 28, 1982, underlined that “for us the marriage consent is an ecclesial act. It establishes the ‘domestic Church’ and constitutes a sacramental reality where two elements are united: a spiritual element, [...] and a social element as an organized hierarchical society.”²⁴

Marriage introduces the spouses into an ecclesial order (*ordo*), and creates rights and duties in the Church between a husband and a wife and towards their children.²⁵ Also, those who are married are bound to the whole ecclesiastical community by the special obligation to strive for the building up of the people of God through their marriage and family.²⁶ Marriage and the Christian family built on it become a seed of the new Christians and the fundamental group unit

²⁰ See Viladrich, *Agonía del matrimonio legal*, 122–23.

²¹ See can. 1057 § 1 CIC.

²² John Paul II, *Familiaris Consortio*, n. 68.

²³ CCC, 1630.

²⁴ John Paul II, *Address to the Tribunal of the Roman Rota* (January 28, 1982). AAS 74 (1982): 449–54, n. 5.

²⁵ See CCC, 1631.

²⁶ See can. 226 § 1 CIC.

of society in which, by the net of mutual connections among families and links inside the society, it becomes a source of Christian influence in the world.²⁷

It is not the point that the marriage comes into being in the ecclesiastical community, as it is done in any other human community. The sacramental dimension of marriage requires that the marriage must be contracted *in facie Ecclesiae*, as public and liturgical act,²⁸ with the priest's blessing—which in the tradition and order of the Catholic and the Non-Catholic Eastern Churches has a fundamental character²⁹—and in the presence of the two witnesses, who are the representatives of the community of believers. It is worth underlining this special, but quite often neglected, aspect of the role of the witnesses of the ceremony of contracting marriage. They are not just the guarantors of the validity of contracting marriage as a legal act, but they are “representatives of the Christian community which, through them, participates in a sacramental act relevant to it, because a new family is a cell of the Church.”³⁰

The commentaries about the participation of the two witnesses in the ceremony of marriage often become content with underlining that—in distinction from the presence of the “qualified” witnesses—they do not play any active function. The two witnesses are not obliged to *formally* participate, which would be connected with the special intention of being the witness and even with the awareness of fulfilling this function. Law does not require that the personal data of the two witnesses be noted down in the documents. The only requirement is minimal perceptual ability,³¹ and ability to give testimony about the contracted marriage.³²

Meanwhile, the role of the two witnesses is more significant than only the ability of perceiving reality, and, potentially, giving the testimony. It is the reason why they are to be encouraged to “prepare themselves properly for the sacrament of Reconciliation and the Eucharist.”³³ It means that the two witnesses of marriage, generally speaking, should be Catholics, but, of course, it is not a requirement *ad valorem matrimonii*.³⁴

²⁷ See Javier Hervada, “Sub can. 226,” in *Código de Derecho Canónico. Edición bilingüe y anotada. A cargo de Instituto Martín de Azpilcueta* (Pamplona: EUNSA, 2007), 208–209.

²⁸ See CCC, 1631.

²⁹ See can. 828 § 1 i 2 CECC. See more Urszula Nowicka, *Szafarz sakramentu małżeństwa. Studium historyczno-prawne* (Wrocław: Papieski Wydział Teologiczny, 2007), 185–92.

³⁰ Pontifical Council for the Family, *Preparation for the Sacrament of Marriage* (May 13, 1996), n. 55.

³¹ The two witnesses must not have a heavy mental disorder, or have no eyesight, or no hearing, or be under the influence of alcohol, or in any way lacking perception.

³² See Ludovicus Bender, *Forma iuridica celebrationis matrimonii. Commentarius in canones 1094–1099* (Romae: Desclée, 1960), 45–46; Alberto Bernárdez Cantón, *Compendio de derecho matrimonial canónico* (Madrid: Tecnos, 1991), 220.

³³ Pontifical Council for the Family, *Preparation for the Sacrament of Marriage*, n. 55.

³⁴ What is interesting, in the project of reform of canon law, which was sent for consultation by the Pontificium Consilium de Legum Textibus in 2011, among prohibitions that could be used

Functional Meaning of the Canonical Form of Marriage

The Council of Trent, while enacting the canonical form of marriage required for the validity of marriage, was moved mainly by the concern to act against the bigamy.³⁵ It must be remembered that at that time, there was no obligation, quite well known nowadays,³⁶ to record every single marriage both in the baptismal register and in the marriage register.³⁷ The obligation in question constitutes today the best means of preventing the bigamy. Introducing the canonical form of marriage in the Decree *Tametsi*, the council was motivated by the need to avoid invalid marriages.³⁸

Also today—although canon law has worked out better means, than in the Trent times, of establishing the freedom to marry (mainly the obligation of presenting the proof of baptism with annotations from the church records)—the above-mentioned function of the canonical form of marriage is still evoked as a justification of its legal binding. *The Catechism of the Catholic Church* expresses this idea in the following words—“the public character of the consent protects the ‘I do’ once given and helps the spouses remain faithful to it.”³⁹

What matters now is not so much the idea, so important to the Fathers of the Council of Trent, of preventing bigamous marriages by revoking the validity of the marriages contracted without the presence of a priest (*matrimonia clandestina*), as generally speaking—the idea of providing the possibility of the effective supervision over the canonical marriages: preparation for marriage,

as a disciplinary punishment there was the prohibition against being the witness of marriage (prohibitio “adstandi ut testis in celebratione canonica matrimonii”). See Pontificium Consilium de Legum Textibus, *Schema recognitionis Libri VI Codicis Iuris Canonici* (Typis Vaticanis, 2011), 24, can. 1336 § 3, 11°.

³⁵ See Bender, *Forma iuridica*, 15.

³⁶ See cann. 1121 § 1, 1122 § 1, and 2 CIC.

³⁷ The Council of Trent introduced the obligation of registration of marriage in the marriage register. Earlier there was no such obligation, although in some places there was a custom of keeping such records. The order of registering the marriages in the baptismal records was introduced by Decree *Ne temere* from 2 August 1907 (S. Congregatio Concilii, Decr. *Ne temere*, CIC Fontes, vol. VI, 867–70, n. 4340).

³⁸ “But while the holy council recognizes that by reason of man’s disobedience those prohibitions are no longer of any avail, and considers the grave sins which arise from clandestine marriages, especially the sins of those who continue in the state of damnation, when having left the first wife with whom they contracted secretly, they publicly marry another and live with her in continual adultery, and since the Church, which does not judge what is hidden, cannot correct this evil unless a more efficacious remedy is applied.” Council of Trent, Session 24, *Canons of the reform of marriage*.

³⁹ CCC, 1631.

verification of legal capacity of the future spouses, integrity of the matrimonial consent to be manifested, proper notification of the marriage in church records, and the possibility of potential annulment of the marriage.

In short, the canonical form of marriage safeguards the Church's exercise of jurisdiction over marriages.⁴⁰ Despite the fact that significant changes occurred in the field of the centuries-old conflict between the Church and state regarding the power over marriages of the Catholics, and that the departure from the confrontation policy has taken place, and that the accent has been put on the positive aspect of mutual relations of the two subjects (that is, the cooperation for the common good), the issue concerning the jurisdiction in question has not yet been solved.

Legal bidding of the canonical form of marriage contracted by the Catholics is the expression of the aspiration of the Church to protect the possibility of exercising jurisdiction over marriages, which would be impossible or would be so much harder if the marriages were not contracted *coram Ecclesia*.

Questioning the Legitimacy of the Canonical Form of Marriage *ad validitatem matrimonii*

Even though the arguments of ecclesiastical, sociological, and legal nature weigh in favor of applying the specific form of contracting marriages, quite often the requirement of obligatory form of marriage is being questioned, especially its necessity for the validity of marriage.

Although such ideas were present at the Council of Trent,⁴¹ today no one challenges the authority of the Church to enact requirements *ad validitatem* of marriage. Still, there are currently some reservations as to the need of keeping in force the requirement of canonical form for the validity of marriage, especially in light of the fact that the legal order instituted by state seems to fulfill quite well the need for public form of contracting marriage as well as its legal certainty by means of the civil form of marriage and civil registrations of it.⁴²

⁴⁰ See Edward Górecki, "Jurysdykcja Kościoła katolickiego nad małżeństwem kanonicznym," in *Skutki cywilnoprawne małżeństwa kanonicznego ze szczególnym uwzględnieniem prawa w Polsce, Słowacji i Republice Czeskiej*, ed. Piotr Ryguła (Kraków: Scriptum, 2014), 35–44.

⁴¹ See Bender, *Forma iuridica*, 17.

⁴² The views of the representatives of canon law are presented in short form in Aznar Gil, *Derecho matrimonial*, 24–28.

Such reservations have been articulated in propositions for the Second Vatican Council⁴³ and they are expressed also today.⁴⁴

There are some scholars who claim that objections against the marriages contracted without the presence of a priest, which are called *matrimonia clandestina*,⁴⁵ have no rational foundations in today's circumstances. The requirements given by the state law are sufficient for the protection of the public character of marriage and they are adequate to prevent the bigamy.⁴⁶

Resignation from the requirement of canonical form for the validity of marriage would make contracting marriage easier for the people who consider themselves unbelievers or in case of the mixed marriages, or the marriages contracted between the people of different than the European culture, and so on.

Some claim that, in the Trent era, the prevention of contracting marriages without canonical form was justified, because there was no marriage register for marriages contracted outside the Church, but today there are registers of civil marriages.⁴⁷

Others allege that the obligation of canonical form of marriage is the excuse for intentional contracting the invalid marriages by the Catholics, who are aware of the fact that marriage contracted without the canonical form is invalid. By doing this, the Catholics can easily free themselves from the bond and, without any consequences, they can contract a new marriage. According to this argument, so easy and cynical multiplication of invalid marriages favors "the divorce mentality" and harms the souls. On the other hand, the Catholics who are not aware of the church regulations contract marriages in non-canonical form and contract them invalidly, depriving themselves of the grace of the sacrament.⁴⁸

⁴³ See Ortiz, *La forma canonica*, 162–63.

⁴⁴ See Alberto de la Hera, "Sobre el signo nupcial y los diversos significados de la forma: algunos temas para el debate," in *El matrimonio y su expresión canónica ante el III Milenio. X Congreso Internacional de Derecho Canónico*, ed. Pedro-Juan Viladrich, Javier Escrivá-Ivars, Juan Ignacio Bañares, Jorge Miras (Pamplona: Eunsa, 2001), 543–44.

⁴⁵ Often the term *matrimonium clandestinum* is translated as "secret marriage." This translation is proper, but only in terms of language (*clandestinus* means: secret, underground). The translation does not offer the essence of the technical term. *Matrimonia clandestina* is not marriage contracted secretly (as it is in case of can. 1131 CIC), but foremost marriage contracted without the presence of the priest. The Council of Trent admitted that such marriages were valid only when contracted before the *Tametsi* Decree.

⁴⁶ See Piotr Kroczeck, "Ocena *raison d'être* norm dotyczących kanonicznej formy zawarcia małżeństwa w warunkach polskiego prawa cywilnego. Przyczynek do dyskusji." *Analecta Cracoviensia* 41 (2009): 469–81.

⁴⁷ See Javier Otaduy, "Abandono de la Iglesia católica por acto formal. Comentario al *Motu Proprio Omnium in mentem*." *Ius Canonicum* 50 (2010): 605–606.

⁴⁸ See Piotr Kroczeck, "Does Obligatory Canonical Form of Marriage Contribute to *salus animarum*?" *Folia Canonica* 12 (2009): 23–30; Kroczeck, "Should Canonical Form still be Required for the Validity of Marriage? the Future of Can. 1108 CIC 1983," in „*Iustitia et Iudicium*."

These opinions are usually combined with the postulates of “restoration” of civil marriage. It means that the canonical form of marriage would be necessary but only *ad liceitatem*, not for validity of marriage. Some of the faithful could decide to contract marriage according to civil form.⁴⁹ The postulates are nothing new. They appeared in the 1960s,⁵⁰ also in the context of the possibility of creating the so-called “natural marriage,” that is, the marriage without the property of sacramentality,⁵¹ by the baptized person who does not have enough faith necessary to be a minister and a subject of the sacrament of marriage.⁵²

Among different proposals, there is one that argues that the civil ceremony should be treated as the first step necessary for a valid marriage (as a sacrament or as just a marriage). For those who would wish, there would be the second step—a priest’s blessing.⁵³

The question arises: would this be the case of contracting canonical marriage in civil form or the case of contracting civil marriage which would be regulated only by state law? The latter marriage can be terminated by divorce, and the marriage in question is without any reference to the religion or the sacrament. The civil marriage is often, in practice, made equal with the factual unions of a man and a woman, and sometimes, in case of the legal regulations of some states, with the unions of people of the same sex. The difference is not only the form of marriage, but the legal shape of marriage, and first of all, the difference is the lack of indissolubility of any civil marriage.⁵⁴

Civil marriage has moved away from one marriage to such a degree that today some propose—as a case of specific protest, under the category of conscience clause—that Catholics should give up the civil effects of marriage. Acceptance of the effects is, according to some, equal to taking part in distorting

Studi di diritto matrimoniale e processuale canonico in onore di Antoni Stankiewicz, ed. Janusz Kowal, Joaquin Llobell (Città del Vaticano: Libreria Editrice Vaticana, 2010), 857–79.

⁴⁹ See Aznar Gil, *Derecho matrimonial*, 26.

⁵⁰ See, critically about such proposals, Rafael Navarro-Valls, “Forma jurídica y matrimonio canónico. Notas críticas a las tesis canonizadoras del matrimonio civil.” *Ius Canonicum* 14 (1974): 63–107.

⁵¹ It would mean questioning the rule of identity between the agreement and the sacrament in the marriage between the baptized persons (see can. 1055 §2 CIC).

⁵² The answer to the postulates was offered in the Apostolic Exhortation of John Paul II, *Familiaris Consortio*, n. 68. Among many studies on this subject, see Tomás Rincón Pérez, “El requisito de la fe personal para la conclusión del pacto conyugal entre bautizados según la Exh. Apost. Familiaris Consortio,” *Ius Canonicum* 23 (1983): 201–36; Grzegorz Leszczyński, *Osoba ochrzczona niewierząca a sakrament małżeństwa* (Łódź: Wydawnictwo Archidiecezji Łódzkiej, 2004), 56–73.

⁵³ See Navarro-Valls, *Forma jurídica*, 69–71 (The author summarizes the voices from academic literature).

⁵⁴ See Remigiusz Sobański, “*Velut Ecclesia domestica* a cywilna forma zawarcia małżeństwa,” *Roczniki Teologiczno-Kanoniczne* 30, part 5 (1983): 33–34.

the institution of marriage, and this must be in the name of the truth simply rejected.⁵⁵

Even if such radical postulates are impossible to keep up due to the order expressed in can. 1071 § 1, 2° CIC of gaining civil recognition for the marriage and existence of objective reasons for this norm,⁵⁶ it would be very dangerous to recognize the civil form of contracting marriage as the equal form to canonical one.

Another objection to the requirement of the necessity of the canonical form of marriage for the validity of marriage has been voiced. After *motu proprio—Omnium in mentem* of October 26, 2009,⁵⁷ went into effect and again bound all the Catholics by the obligation of observing the canonical form of marriage, even those who by a formal act defected from the Catholic Church,⁵⁸ the objection has been voiced that this regulation would lead to multiplication of invalid marriages and, at the same time, it would limit the *ius connubii* of those of the Faithful who are formally and spiritually far away from the Church, and who have no motivation to respect canonical form of marriage when they contract marriage with non-Catholics or with the apostates.⁵⁹

The Pope Benedict XVI's decision of the novelization of can. 1117 CIC (the analogical can. 834 § 1 CCEC 1988 did not contain the clause of the formal act of defecting from the Church), was made, similarly to the Council of Trent's decision, to eliminate *matrimonia clandestina*—as it is expressed in the justification of the law⁶⁰—which were contracted outside the Church (most often in the civil registry office) by the Catholics, who had been separated from the church community by the formal act and who, very often, were not aware of the canonically binding character of such marriages.⁶¹

⁵⁵ See Hugo de Azevedo, "Perché registrare civilmente i matrimoni canonici?," *Studi Cattolici* 48 (2005): 767–69, n. 537; de Azevedo, "A objeção de consciência á transcrição do matrimónio canónico no Registo Civil," *Forum Canonicum* 3 (2008): 153–57.

⁵⁶ See Piotr Majer, *Zawarcie małżeństwa kanonicznego bez skutków cywilnych (kan. 1071 § 1, 2° Kodeksu Prawa Kanonicznego)* (Kraków: Wydawnictwo Naukowe PAT, 2009), passim.

⁵⁷ Benedict XVI, *Motu proprio Omnium in mentem*, AAS 102 (2010): 8–10.

⁵⁸ Can. 1117 CIC promulgated in 1983 excluded the Catholics, who have left the Church "by a formal act" from the obligation of observing canonical form of marriage. Thus, the Catholic who left the Church by a formal act, contracting marriage with other Catholics who are in the same situation or with the non-Catholic, would contract marriage also validly in civil form. After the novelization of law in 2009 it has been no longer possible.

⁵⁹ See Otaduy, *Abandono de la Iglesia católica*, 612, 619–21, 624.

⁶⁰ "[...] many of the marriages would be *de facto* secret (*clandestina*) for the Church."

⁶¹ Formulation of can. 1117 before its novelization in 2009 was very disputable and caused many polemics among the commentators, especially the term "a formal act of separation from the Church" was not clear. Only the circular letter of the Pontifical Council for Legislative Text, *Actus formalis defectionis ab Ecclesia catholica* (March 13, 2006), *Communicationes*

After the novelization of the can 1117 CIC, those Catholics who are contracting only civil marriages are contracting them invalidly. For a valid contraction of marriage they must observe the canonical form. The Catholics are obliged to respect the norm, but, due to the fact that they have chosen to defect from the Church, they are not going to do it.

It causes the invalidity of such marriages in the church legal order. To avoid this, the canonical form of marriage would have to be not required *ad validitatem matrimonii*. On the other hand, it must be remembered that such persons who defected from the Church by the act of apostasy are unlikely to seek the canonical validity for their marriage. What is more, in case of the repentance and coming back to the communion with the Church, they accepted with surprise the information that they were bound by canonical marriage.⁶²

The Apostolic Dimension of the Canonical Form of Marriage

If the idea that the marriage contracted in the civil form is also valid in the Church were to spread, the Church would practically lose the possibility of exercising jurisdiction over the canonical marriage and, in the longer perspective, over marriage as a reality that comes from the Creator himself. How would it be possible, for instance, in such a situation, to confirm a free state of a person—and to avoid remarrying after divorce—with a deep conviction of conscience that the marriage is valid and recognized by the Church, with all disciplinary and moral consequences such as, for example, the possibility of receiving the Holy Communion?

In talking about the control or exercise of jurisdiction, the point is not only to take actions of the strict supervising nature. The significance of the canonical form does not exhaust the legal certainty of the contracted marriage (such a legal certainty can be given by any public form—also a civil one.)⁶³ Even if the

38 (2006): 170–72, brought some relevant directions for proper interpretation of the act in question, but the document did not solve all the problems.

⁶² This inconvenience was mentioned in *motu proprio Omnium in mentem*: “The new law also made difficult the return of baptized persons who greatly desired to contract a new canonical marriage following the failure of a preceding marriage.”

⁶³ Although in the literature the difference between the function of the canonical form of marriage and the civil form is underlined. The first form is to guarantee, first of all, the public character and legal certainty of the act of contracting marriage. The second one has a constitutive character. Contracting marriage in accordance with the formalities creates the legal supposition *iuris tantum*. It means that it allows the contrary proof, that the matrimonial consent as

arguments of the social nature would not be convincing enough for justification of the necessity of the canonical form ad *validitatem* of marriage, the ecclesiastical dimension of the canonical form must be still underlined and deepened.

The canonical form of marriage connected with a liturgical form should manifest authentic matrimonial consent—a sacramental sign.⁶⁴

Reception of the matrimonial consent in nomine *Ecclesiae*⁶⁵ by the assisting person gives not only the certainty about the consent (as a confirmation of the fact of expressing the consent and the legal consequences of it), but also the guarantee—of course not an absolute one—that the consent of the parties is a genuine one.⁶⁶

The canonical form of marriage is a specific reassurance of the Church about the integrity of matrimonial consent expressed by the future spouses. Allowing them to take part in the ceremony,⁶⁷ the Church confirms that the consent in question is a real expression of their mutual giving and accepting one another for the purpose of establishing marriage.⁶⁸

This confirmation is not, of course, an absolute one. Rather, it creates the foundation of the supposition (which can be overcome) of the validity of marriage.⁶⁹ Without the preparatory actions, which are the compulsory result of the need of the canonical form of marriage (the preparatory actions include: religious education, liturgical preparation, establishing the freedom to marry, verification of the integrity of the consent⁷⁰), there would be no practical means to make sure that the marriage which is to be contracted would measure up to the requirements given by the teaching of the Church.⁷¹

casua efficiens of marriage was manifested in a proper way. Civil law, creates *praesumptio iuris et de iure*. It means that in civil law there is no place for simulation (see can. 1101 § 2 CIC) as the reason of invalidity of marriage. The conditions are treated as non-existent. Civil law, generally speaking, is not eager to challenge the validity of matrimonial consent, which was formally manifested in the way prescribed by law, which is contrary in canon law. The law in question recognizes the primacy of real consent. It is the reason why formulation of the allegations about the excessive formalism is false. See Enrique Lalaguna, “Función de la forma jurídica en el derecho canónico,” *Ius Canonicum* 1 (1961): 215–27.

⁶⁴ See Aznar Gil, *Derecho matrimonial*, 26–27.

⁶⁵ See can. 1108 § 2 CIC.

⁶⁶ See Lalaguna, “Función de la forma,” 218; Dzierżon, *Funkcje formy kanonicznej*, 116–18.

⁶⁷ In practice, the liturgical form of marriage and canonical form of marriage are mutually connected; still one must be aware of the difference between them.

⁶⁸ It is the strict sense of the words of John Paul II from *Familiaris Consortio*, n. 68: “However, when in spite of all efforts, engaged couples show that they reject explicitly and formally what the Church intends to do when the marriage of baptized persons is celebrated, the pastor of souls cannot admit them to the celebration of marriage.”

⁶⁹ See can. 1060 CIC.

⁷⁰ See can. 1063 and 1066 CIC.

⁷¹ See Ortiz, *La forma canonica*, 138–39.

It seems insufficient to postulate keeping the canonical form only *ad liceitatem* of marriage, with keeping, at the same time, the obligation for the spouses to come, after contracting marriage according to civil form or any other form, to the Ordinary or the pastor, in order to verify if the marriage meets the requirements of legal capacity of the parties and could be considered as a valid marriage, and registered in the church registers of marriage.⁷²

This project produces some serious objections—how to treat marriages, when the spouses did not come to the pastor? It can be presumed that the vast majority of the persons who are contracting marriage outside the Church would not be interested in canonical verification of their bond of marriage.

Recognition, as a general rule, of the civil form of marriage as a sufficient ground for valid contraction of canonical marriage, that is, the so-called “canonization” of the civil form of contracting marriage,⁷³ would cause, first of all, diminishing of the sacramental dimension of marriage. But the dimension in question is to be protected by the institution of canonical form of marriage.⁷⁴

By keeping the obligation of canonical form of marriage, the Church desires that the marriage should not be deprived, in the social awareness, of the sacramental sign, and the Church be seen as the giver of the blessing for marriage.

The ultimate reason for keeping the canonical form is the requirement of recognizability of the sacramental sign of marriage. It allows keeping and defending the other significant characteristics of the marriage in the face of the secularization of the institution. One of the signs of the secularization is the devaluation of marriage’s public and legal dimension and pushing it into the realm of private reality and treating the marriage only as a matter of conscience. It is done simultaneously with the process of making equal, in practice and in law, the marriages with other forms of cohabitation.

The canonical form of contracting marriage has really the apostolic significance and it differs from the civil form of marriage. Civil law limits its horizons to the earthly community. Church law, although it is the law of the earthly community, does not close itself within the limits of the current time. The latter law is the law of the community of salvation and the law must give testimony. Although it fulfills its function in the world, it does not give orders to the world; it strives for the recognition of the Church’s actions by the world.⁷⁵

⁷² See Ortiz, *La forma canonica*, 170. It would be administrative proceeding analogical to the proceeding of legalization of marriages contracted by the Catholics in the Orthodox Church, where the form of marriage bids only *ad liceitatem* (see can. 1127 § 1 CIC). See Leszek Adamowicz, “Aspekt prawno-liturgiczny zawarcia małżeństwa katolików z prawosławnymi,” in *Kanoniczno-liturgiczne aspekty zawierania małżeństw mieszanych i im podobnych*, ed. Urszula Nowicka (Warszawa: Wydawnictwo Gaudentinum, 2014), 80–81.

⁷³ See can. 22 CIC.

⁷⁴ See Navarro-Valls, *Forma jurídica*, 97.

⁷⁵ See Sobański, *Velut Ecclesia domestica*, 38–39.

The canonical form of contracting marriage is one of a number of the institutions of the Church law that fulfill the role in question. It should be the sign of the genuine marriage—the authentic mutual act of giving and accepting man and woman, who—strengthened by the grace of the sacrament—establish, in the face the Church and the world, a partnership of their whole life.

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Piotr Majer

L'importance de la forme canonique du mariage

Résumé

L'article présente l'argumentation justifiant l'exigence de la forme canonique de la conclusion du mariage exigée *ad validitatem matrimonii* depuis le concile de Trente. Vu les critiques et les revendications de l'abolition du caractère nécessaire de la forme canonique, l'auteur expose son importance strictement religieuse. Étant donné la sécularisation du mariage, la forme canonique de sa conclusion devrait non seulement permettre à l'Église d'exercer d'une façon efficace la juridiction sur le mariage, mais avant tout constituer un outil de témoignage du caractère sacramentaire du mariage et une garantie de l'authenticité du signe de mariage aussi bien à l'égard des futurs époux qu'à extra à l'égard du monde.

Mots clés: droit canonique, mariage, forme canonique

Piotr Majer

Il significato della forma canonica del matrimonio

Sommario

L'articolo presenta gli argomenti che giustificano il requisito della forma canonica del matrimonio richiesto *ad validitatem matrimonii* a partire dal Concilio di Trento. Tenuto conto delle critiche e delle richieste dell'abolizione del carattere obbligatorio della forma canonica, l'autore espone il significato di quest'ultima in senso strettamente ecclesiale. Di fronte alla secolarizzazione del matrimonio, la sua forma canonica non solo dovrebbe permettere alla Chiesa di esercitare un'efficace giurisdizione sul matrimonio, ma soprattutto dovrebbe essere uno strumento per assistere il sacramento del matrimonio e per garantire l'autenticità del carattere del matrimonio ad entrambe le parti contraenti e all'infuori di esso.

Parole chiave: diritto canonico, il matrimonio, forma canonica

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Effects of Matrimonial Canon Law: Pastoral Aspects

Abstract: The value changes in the Western world since the 1960s have been markedly strong as regards the youth towards marriage. This situation was reacted to already in the 1983 Code of Canon Law promulgated by Pope John Paul II. Canon law can thus more effectively become a relevant tool in the pastoral care for the betrothed and married spouses in the Catholic Church. However, the basis for such pastoral ministry is a thorough preparation of couples for marriage and their permanent spiritual accompaniment. Legal tools referred to in the present paper can contribute to solving unusual or difficult situations of the spouses and enabling them access to sacramental life.

Keywords: matrimony, spouses, canon law, pastoral care, Catholic Church

Canon law defines the space in which the catechesis on matrimony, preparation of the betrothed for their marriage and its liturgical celebration take place; finally, it also contributes to solving difficult conditions the married couple can come across. The law of the Catholic Church is typical for determining the basic requirements both for the validity (*ad validitatem*) and permissibility (*ad liceitatem*) of legal acts. The new 1983 Code of Canon Law (CIC/1983), influenced by the wide pastoral considerations of Vatican II, however, uses other categories, for example spiritual utility (*spiritualis utilitas*) or “fruitful,” that is, effective liturgical worship (*fructuosa liturgica celebratio*).

Social Changes and Changes in the Church

The 1917 Code of Canon Law (CIC/1917) was promulgated in a period, in which the Church's doctrine about the goals and the essence of marriage in the then concept was generally known, at least among the Catholics. The Code hierarchized the ends or goals of marriage into primary and secondary ones:¹ "The primary end of marriage is procreation and education of children (*procreatio atque educatio prolis*); the secondary [end] is mutual support and remedy of concupiscence (*mutuum adiutorium et remedium concupiscentiae*). The essential properties of marriage are unity and indissolubility, which in Christian marriage obtain special firmness by reason of the sacrament."²

However, the apostolic exhortation of Pope John Paul II on the role of the Christian family (1981) confirms that the Church's concept of marriage can be ignored and is no longer taken to be a matter of course: "In some countries it is still the families themselves that, according to ancient customs, ensure the passing on to young people of the values concerning marriage and family life, and they do this through a gradual process of education or initiation. However, 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 adequate preparation of young people for their future responsibilities."³ The transformation of values, which struck the Western world especially in the 1960s, has been particularly significant in relation to the way young people understand marriage.⁴

Nevertheless, the legislator of the old Code, whose normativity was compiled in the beginning of the 20th century, demanded that concrete and immediate preparation of the nupturients should be entrusted fully in the pastoral care of

¹ "The first author that seems to have distinguished the ends of marriage into the primary and secondary ones was the Dominican Domingo de Soto (1494–1560) and the first official document of the Church talking about the primary and secondary ends of marriage was the 1917 Code of Canon Law." Ján Duda, *Katolícke manželské právo* (Spišská Kapitula—Spišské Podhradie: Kňazský seminár J. Vojtaššáka, 1996), 23.

² CIC/1917, can. 1013, § 1–§ 2.

³ Apostolic Exhortation *Familiaris Consortio* of John Paul II on the Role of the Family in the Modern World (November 22, 1981), art. 66. Hereafter as FC.

⁴ "A lot of young people have lost all illusions about a normal family and experiment with forms of cohabitation totally unknown to their parents [...]. Marriage, for generations the most desired goal of the youth, is now becoming undesirable. We feel the rebellion of the youth against absolute obligations for the whole life. Marriage is less and less safe. People who entered marriage see how after a certain period of time the presumed happiness and fulfilment they were seeking is slowly vanishing and ask the question whether they do not just cling to a mere peel of the original dream."—Larry a Nordis Christenson, *Křesťanští manželé* (Praha: Evangelické nakladatelství, 1991), 10.

the parish priest, who “shall not omit, according to the varying conditions of the persons, to instruct the spouses on the sanctity of marriage and on the mutual obligations of spouses and of parents.”⁵ Here the pastoral goal clearly overlaps with strict legal obligation imposed on the concrete ministers of the Church.⁶ The 1983 Code, however, understands the preparation of nupturients much more broadly, that is, in the entire ecclesial dimension: “Pastors of souls are obliged to take care that their ecclesiastical community offers the Christian faithful the assistance by which the matrimonial state is preserved in a Christian spirit and advances in perfection.”⁷

The Degrees of Preparation for Marriage

Naturally, as far as the education on marriage and parenthood are concerned, it is desirable to take place in primary families, however, on the condition that they themselves live in the Christian spirit.⁸ John Paul II characterizes the effect of primary families as remote preparation: “Remote preparation begins in early childhood, in that wise family training which leads children to discover themselves as being endowed with a rich and complex psychology and with a particular personality, with its own strengths and weaknesses.”⁹ The Code of Canon Law does not explicitly mention this aspect in the provision about the preparation for marriage, nevertheless, the article on Catholic education contains a programmatic formulation about the priority given to the parental education of children: “Parents and those who take their place are bound by the obligation and possess the right of educating their offspring. Catholic parents also have the duty and right of choosing those means and institutions through which they can provide more suitably for the Catholic education of their children, according to

⁵ CIC/1917, can. 1033.

⁶ “CIC/1917 talked about personal preparation for marriage in a very fragmentary manner: Canon 1018 and 1033 see it as the mission of the parish priests (explicitly only to them—sic!) and Canon 1021 § 2 requires receiving the sacrament of confirmation prior to the wedding.” Damián Němec, *Manželské právo katolické církve s ohledem na platné české právo* (Praha—Kostelní Vydří: Krystal, Karmelitánské nakladatelství, 2006), 35.

⁷ CIC/1983, can. 1063.

⁸ “It matters gravely in Christian education that parents be people of sincere, obedient faith who can provide a clear testimony of their faith.” In order to instruct their children, they must, therefore, be sufficiently instructed themselves.” Štěpán Šoltész, *Kristus a rodina* (Praha: Kalich, 1970), 181.

⁹ FC, n. 66, p. 70, see n. 3.

local circumstances.”¹⁰ The Magisterium insisted on this right of parents already prior to Vatican II; we can see that in the reference to the Code of Canon Law¹¹ made by Pope Pius XI in his encyclical *Divini illius magistri* promulgated in 1929, that is, in the period in which the etatism of Mussolini’s “total state” (*stato totale*) intended to take control of the education of children:

The wisdom of the Church in this matter is expressed with precision and clearness in the Codex of Canon Law, can. 1113: “Parents are under a grave obligation to see to the religious and moral education of their children, as well as to their physical and civic training, as far as they can, and, moreover, to provide for their temporal well-being.” On this point the common sense of mankind is in such complete accord that they would be in open contradiction with it who dared maintain that the children belong to the State before they belong to the family, and that the State has an absolute right over their education.¹²

By remote preparation Pope John Paul II means not only education in the actual family, but also a wider ecclesial formation: “Also necessary, especially for Christians, is solid spiritual and catechetical formation that will show that marriage is a true vocation and mission, without excluding the possibility of the total gift of self to God in the vocation to the priestly or religious life.”¹³ The Code of Canon Law transforms this aspect of proclaiming the doctrine into an appeal to offer pastoral assistance to marriage with “preaching, catechesis adapted to minors, youth, and adults, and even the use of instruments of social communication, by which the Christian faithful are instructed about the meaning of Christian marriage and about the function of Christian spouses and parents.”¹⁴ According to the classification found in the exhortation of John Paul II, the means mentioned in this norm of the Code also introduce the *proximate preparation* which “from the suitable age and with adequate catechesis, as in a catechumenal process, involves a more specific preparation for the sacraments, as it were, a rediscovery of them.”¹⁵ An aspect of preparation for marriage is also integrated in the following quotation:

This preparation will present marriage as an interpersonal relationship of a man and a woman that has to be continually developed, and it will encour-

¹⁰ CIC/1983, can. 793.

¹¹ CIC/1917, can. 1113.

¹² *Divini illius magistri*, Encyclical of Pope Pius XI on Christian Education, accessed (July 15, 2015), http://w2.vatican.va/content/pius-xi/en/encyclicals/documents/hf_p-xi_enc_31121929_divini-illius-magistri.html.

¹³ FC, art. 66.

¹⁴ CIC/1983, can. 1063 1°.

¹⁵ FC, art. 66.

age those concerned to study the nature of conjugal sexuality and responsible parenthood, with the essential medical and biological knowledge connected with it. It will also acquaint those concerned with correct methods for the education of children, and will assist them in gaining the basic requisites for well-ordered family life, such as stable work, sufficient financial resources, sensible administration, notions of housekeeping.¹⁶

For the following degree of the preparation, the Code uses the term “personal” (*preparatio personalis*). It talks about assistance to concrete nupturients by the means of “personal preparation to enter marriage, which disposes the spouses to the holiness and duties of their new state.”¹⁷ The papal exhortation calls this preparation “immediate”; it refers to an “exam” (*examen*) of the spouses required by the Code: “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.”¹⁸ The view of the immediate preparation sketched by the pope thus presupposes mingling of legal and pastoral elements.¹⁹ As regards legal rulemaking, a detailed legal framework is decentralized by an authorizing provision: “The conference of bishops is to establish norms about the examination of spouses and about the marriage bans or other opportune means to accomplish the investigations necessary before marriage. After these norms have been diligently observed, the pastor can proceed to assist at the marriage.”²⁰ If the betrothed wish to have someone else than the parish priest to assist at their wedding ceremony, this person becomes responsible for keeping the legal framework of contracting their marriage: “The person assisting at marriage acts illicitly unless this person has made certain of the free status of the contracting parties according to the norm

¹⁶ FC, art. 66.

¹⁷ CIC/1983, can. 1063 2°.

¹⁸ FC, art. 66, p. 71.

¹⁹ “The goal of the legal preparation is the assurance of validity and permissibility of marriage via the so-called fore-wedding proceedings. One of its objectives is *cooperation of the nupturients with the parish priest in the administrative field* which should help create moral certainty that no impediments hinder the celebration of the marriage, that is, reaching certainty about the unmarried status of the nupturients and excluding marriage impediments and bans. This is done by completing a spousal protocol, presenting relevant documents, cooperating on possible requesting of necessary dispensations and permits (legal preparation), but especially by open personal contact making it possible to reach a moral certainty about an appropriate understanding of marriage and due intention to enter the matrimonial state (this is particularly the contents of the immediate personal preparation).” Damián Němec, *Manželské právo*, 35.

²⁰ CIC/1983, can. 1067.

of law, and, if possible, of the permission of the pastor whenever the person assists in virtue of general delegation.”²¹

Preventing Defects of Matrimonial Consent

Difficulties with understanding marriage for the nuputrients may reach such a form which the Canon Law presents as a defect of matrimonial consent: “If, however, either or both of the parties by a positive act of the will exclude marriage itself, some essential element of marriage, or some essential property of marriage, the party contracts invalidly.”²² That which renders marriage invalid entails the so-called total simulation of the marital contract, while partial simulation violates particularly the “goods” of marriage, as defined by St. Augustine: “This is the goodness [*bonum*] of marriage, from which it takes its glory: offspring, chaste fidelity, unbreakable bond. Let these nuptial goods be the objects of our love: offspring (*prolis*), fidelity (*bonum fidei*), the unbreakable bond (*sacramenti*).”²³ The new Code literally takes over the provision of the 1917 Code about two essential properties of marriage which are content-wise related to the Augustinian “goods”: “The essential properties of marriage are unity and indissolubility, which in Christian marriage obtain a special firmness by reason of the sacrament.”²⁴ Unity as an essential property relates to the cohabitation of one man and one woman, and excludes polygamy, polyandry, and the cohabitation of same-sex couples.²⁵ Unity clearly presupposes mutual fidelity of the spouses. The Code thus defines matrimonial covenant as a bond “by which a man and a woman establish between themselves a partnership of the whole of life (*consortium totius vitae*).”²⁶ The second property of marriage is indissolubility, which has by now become an exceptionally demanding lifelong challenge for the couple, although in traditional societies it was understood more as an institutional matter of course.²⁷

²¹ CIC/1983, can. 1114.

²² CIC/1983, can. 1101 § 2.

²³ *De bono coniugali* 24, in *Patrologia latina* 40: 394.

²⁴ CIC/1983, can. 1056.

²⁵ “The word ‘unity,’ used here, does not refer to a ‘successful marriage’ in which wife and husband understand each other or are one. It expresses exclusivity, i.e. that the union of one man and one woman is an essential property of marriage.” Jiří Kašný, *Manželství v západní tradici. Soubor kanonických studií* (České Budějovice: Jihočeská univerzita, 2006), 37.

²⁶ Cf. CIC/1983, can. 1055 § 1.

²⁷ “The fact that marriage in the past could last for the whole life was partially due to an external support and external limitations which helped marriage unions to stay together. That

These elements and “goods” need to be distinguished from the good of the concrete spouses, which is—in compliance with the concept of Vatican II—²⁸an equally essential property of marriage together with procreating and educating children: “For the good of the spouses and their off-springs as well as of society, the existence of the sacred bond no longer depends on human decisions alone.”²⁹ The new Code then transforms this concept into a programmatic legal norm, in which the matrimonial covenant (*matrimoniale foedus*) “is ordered by its nature to the good of the spouses (*bonum coniugum*) and the procreation and education of offspring (*prolis generationem et educationem*).”³⁰ The equal status of the “good of the spouses” with the traditional “procreation and education of offspring” was in fact enforced thanks to the work on the new Code.³¹

The concept of the good of the spouses was characterized in John Paul II’s Letter to Families, issued on the occasion of the Year of the Family (declared by the same pope in 1994):

The words of consent define the common good of the *couple and of the family*. First, the common good of the spouses: love, fidelity, honor, and permanence of their union until death—“all the days of my life.” The good of both, which is at the same time the good of each, must then become the good of the

does not mean that the love between the two partners was not profound. If there was such a love, the marriage had an internal permanence of a different kind than in many other marriages held together chiefly by external factors. Moreover, the permanence or indissolubility of marriage was not understood as something which would result from the nature of the partners’ mutual love. Thus, their love was not understood as essentially important for their marriage and its indissolubility.” Kevin T. Kelly, *Rozvod a druhý sňatek. Tváří v tvář výzvě* (Brno: Centrum pro studium demokracie a kultury, 2012), 36.

²⁸ “The constitution *Gaudium et spes* of Vatican II made a bold attempt to evaluate marriage in the contemporary world from the theological perspective [...]. Marriage is thus understood as an intimate community of love, as a Christian mission, sacramental bond, covenant, and mutual gift of two persons. It is remarkable that traditional formulation describing marriage as a contract is missing. The major theological issue was reassessing the question whether procreation is the primary natural purpose and end of marriage.” Francis Schüssler Fiorenza, “Manželství,” in *Systematická teologie III — římskokatolická perspektiva*, ed. Francis S. Fiorenza, John P. Galvin (Brno–Praha: CDK, Vyšehrad), 119–161, 135.

²⁹ *Gaudium et spes*, 48.

³⁰ Cf. CIC/1983, can. 1055 § 1.

³¹ “The term the ‘good of the spouses’ entered general consciousness when it was used by Dominicus M. Prümmer in his manual of moral theology. In fact, in his concept this ‘good’ was the most important end of marriage [...]. As we can see, the canonists enforced the ‘good of the spouses’ among the ends of marriage. On the other hand, in theological literature on marriage this term often does not even appear. Even the *Catechism of the Catholic Church* does not explain the doctrine in more detail. Instead, it simply quotes the appropriate Canon (art. 1601, cf. art. 2363).” Dominik Opatrný, *Dobro manželů v kontextu biblické etiky, Revue církevního práva* 57–1 (2014): 49–63, 50, 52.

children. The common good, by its very nature, both unites individual persons and ensures the true good of each.³²

Here the pope proceeds from the wording of the matrimonial consent and comes to the traditional “good of the offspring.” For comparison, we may quote the concept of marriage embedded in today’s Czech civil law: “Marriage is a permanent community of man and woman founded in the way stipulated by law. The main purpose of marriage is foundation of family and proper upbringing of children.”³³ Contrary to the practice of the Church, the role of the state is not to search whether nupturients intend to contract a marriage as it is legally defined.³⁴

However, neither of the nupturients wishing to contract a marriage in a canonical form can exclude the sum of elements and goals of marriage stipulated by the Canon Law, both in totality or individually. If a minister preparing them for marriage finds out that one or both of these elements are rejected, he will not proceed to administering the wedding. Such nupturients wish to contract a covenant whose content is at odds with the matrimonial covenant, as it is understood by the Church. No Catholic minister is licensed to celebrate such a wedding: “However, if the betrothed openly and explicitly disagree with the meaning the Church puts forward in relation to marriage between the baptized, the pastor must not perform the wedding; he is obliged—even unwillingly—to take into account the given situation and inform the couple concerned that under such circumstances it is not the Church, but they themselves who impede the ceremony they want.”³⁵ Pastorally speaking, it is a particularly sensitive matter: “Those who demand sacramental marriage usually come late, oftentimes under the pressure of immature motivations. They frequently find themselves in a situation, in which they are not ready to hear ordinary ecclesiastical language. In terms of the life of faith, and the future life in marriage, the betrothed asking for a church marriage in most cases live diametrically different personal stories. Similarly, their expectations regarding marriage and marriage preparation are divergent as well. One must, therefore, distinguish a pre-evangelization and

³² John Paul II, Letter to Families *Gratissimam Sane* from Pope John Paul II, http://w2.vatican.va/content/john-paul-ii/en/letters/1994/documents/hf_jp-ii_let_02021994_families.pdf, art. 10. Hereafter as GS.

³³ Zákon č. 89/2012 Sb., občanský zákoník, § 655.

³⁴ “The main end of marriage is defined as starting a family and proper education of children. Such is the situation. Nevertheless, it is unquestionable that there are marriages whose end is something totally different. The end of marriage can be creating a firm basis for bearing children, but there may be psychological and health reasons, the purpose may be a mutual social support or fulfilling some economic interests.” Karel Eliáš et al., *Nový občanský zákoník s aktualizovanou důvodovou zprávou a rejstříkem* (Ostrava: Sagit, 2012), 287.

³⁵ *Svatební obřady. Druhé vydání* (Praha: Česká biskupská konference, 2007), *Úvod II — Příprava na manželství*, art. 21, s. 11–12.

pastoral situations and choose the manner of preparation accordingly. The evangelization moment, that is, helping people discover or deepen their lives in the light of the Gospel, should never be absent in the preparations.”³⁶

Life of faith brings the betrothed closer to the Church’s understanding of marriage in a completely natural way; although—given the contemporary situation—they tend to live in an environment alienated from the Church.³⁷ However, those individuals whose life is lived away from Christian principles often tend to adopt majoritarian patterns of behavior in the society abandoning traditional moral attitudes,³⁸ for example, they test the issue of matrimonial fidelity as one of the “goods” of marriage in a way that cannot bring them closer to a full understanding and experiencing of what real fidelity means.³⁹

When contemporary social and economic parameters lead couples to postpone marriage, contrariwise, in traditional societies, it was deemed responsible to slow down a too early contraction of marriage.⁴⁰ In this context, the legislator of the 1917 Code assigned a duty to the parish priest to consult the local Ordinary if he was to assist at a wedding of nupturients who were too young: “The pastor shall gravely exhort children yet in families not to enter into wedding if the partners are unaware of it or [if they] are reasonably opposed to it; but if they are going to marry, he should not assist without first consulting the local Ordinary.”⁴¹ According to the new Code, a license is needed to marry “a minor

³⁶ *Směrnice ČBK pro přípravu na svátost manželství v ČR*. Document of Czech Bishop conference (Praha: Česká biskupská konference, 2010), art. 2.3, p. 3.

³⁷ “Therefore the issue of faith is not a marginal, but a central one. Nowadays, when young people live in a community outside the Church more than in the Church, such considerations become important. Young people should remember these things and their friends and parents should remind them of it with particular urgency. They should talk about it and pray for unity in faith.” Josef Smolík, *Pastýřská péče* (Praha: Kalich, 1991), 153.

³⁸ “Triple fear—to be infected, to conceive, and to be discovered—which some people felt earlier and which forced them to ‘Christian’ behaviour (monopoly of marriage) has vanished thanks to medicine and the lifestyle of urban inhabitants.” Joseph Fletcher, *Situáční etika* (Praha: Kalich, 2009), 104.

³⁹ “From this perspective we should now consider the frequently asked question of marriage on test or with the so-called no-licence marriage. In the end, it is always a link given to observation, an essential element—unconditional fidelity—is not there. Apart from that, firm mutual fidelity cannot be tested [...]. A truly human dimension can only be reached—and be trained in it—only at the definitive decision.” Franz Furger, *Etika seberealizace, osobních vztahů a politiky* (Praha: Academia, 2003), 69.

⁴⁰ “Given the gravity of sacred mystery of marriage and in regards to the fact the most Christian marriages suffer from formality, it is necessary to think about the possibility to postpone the contraction of the marriage until the bridegroom and the bride understand the genuine and real meaning of the sacred mystery of marriage to realize that the sacred mystery of marriage is eternal unity formed on the unity of Christ and His Church.” Imrich Belejkaníč, *Pravoslávne dogmatické bohoslovie II* (Prešov: Pravoslávna bohoslovecká fakulta, 1996), 146–47.

⁴¹ CIC/1917, can. 1034.

child when the parents are unaware or reasonably opposed.⁴² Moreover, the Code provides a pastorally oriented appeal: “Pastors of souls are to take care to dissuade youth from the celebration of marriage before the age at which a person usually enters marriage according to the accepted practices of the region.”⁴³

However, the influence of parents or pastors can work in the opposite direction, because it is possible (even unintentionally) to be compelled into marriage: “A marriage is invalid if entered into because of force or grave fear from without, even if unintentionally inflicted, so that a person is compelled to choose marriage in order to be free from it.”⁴⁴ The defect of the matrimonial consent formulated in this way can often manifest itself as *timor (metus) reverentialis*, that is, the fear of a disfavor from a person, whom the nupturient gravely respects.⁴⁵ We should add that—contrary to Luther’s concept—the Catholic Church has never officially taught that the will of the parents is decisive for contracting a marriage: “The consent of the parties, legitimately manifested between persons qualified by law, makes marriage; no human power is able to supply this consent.”⁴⁶

The Paradoxes of the Legal Regulation

Although it is evident that marriages of too young people are not desirable⁴⁷—as well as those of too advanced an age⁴⁸—the formulation of the matrimonial

⁴² CIC/1983, can. 1071 6°.

⁴³ CIC/1983, can. 1072.

⁴⁴ CIC/1983, can. 1103.

⁴⁵ “In practice, fear arising from the respect (*metus reverentialis*) does not need to be a big issue. However, it becomes a grave problem, e.g., the natural worry stemming from the fear of disobedience to your parents, the fear that certain behaviour can inflict pain on your parents, etc.” Ján Duda, *Katolícke manželské právo*, 126.

⁴⁶ CIC/1983, can. 1057 § 1.

⁴⁷ “Generally, one may say that the Church is not rejoicing over marriages of minors because there is a real supposition that this important step in life has been realized in a state of psychic immaturity. Such cases require more attention; therefore, the Church also investigates the causes of such nupturients.” Duda, *Katolícke manželské právo*, 72.

⁴⁸ “However, for starting a family, the right time of life is irreversible. Especially postponing the birth until relatively high age of the woman (which is, by the way, taken to be something modern and simply a matter of course) poses a number of dangers and unnaturalness. In this sensitive and most human of all questions we find extremes (too young or too advanced age of the parents) generally unacceptable, because they necessarily deform parenthood and further course of life for those who are born out of such unions (not to mention the health risks.)” Senta Radvanová and Michaela Zuklínová, *Kurs občanského práva. Inštitúty rodinného práva* (Praha: C. H. Beck, 1999), 5.

impediment of age (*impedimentum aetatis*) reveals that given the diversity of cultures, the Church counts with very young couples: “A man before he has completed his sixteenth year of age and a woman before she has completed her fourteenth year of age cannot enter into a valid marriage.”⁴⁹ Nevertheless, the legislator in the authorizing regulation makes it possible for adapting the age to the civil law of individual concrete states: “The conference of bishops is free to establish a higher age for the licit celebration of marriage.”⁵⁰ Following the trend of enculturation, the legislator for the whole Church takes into account the liturgical customs of the regions, ethnic groups, and nations. This is manifested in the possibilities of adapting the liturgical form: “The conference of bishops can produce its own rite of marriage, to be reviewed by the Holy See, in keeping with the usages of places and people which are adapted to the Christian spirit; nevertheless, the law remains in effect that the person who assists at the marriage is present, asks for the manifestation of consent of the contracting parties, and receives it.”⁵¹ Nowhere else can we find a regulation about liturgical ceremonies and celebrating the sacraments which would provide such free hand to particular law.

The fact that such a grave decision for the whole life can be given to fourteen or sixteen-year-old people contrasts dramatically with the age limitations of other, similarly obligatory, definitive decisions: solemn vows can be taken only at the age of 21,⁵² priestly ordination at 25.⁵³ Moreover, the Code dedicates only a single canon related to the preparation for marriage,⁵⁴ while for the preparation to a definitive decision for consecrated life has 12 canons,⁵⁵ and for the ordination we find as many as 32 canons.⁵⁶

It is chiefly the primary families who are to act as educational environments for contracting future marriages. However, even those often fail in its role.⁵⁷ Even the desirable impact of the entire Christian community as an environment of inspiration and support is not as direct, as for example a priestly seminary,

⁴⁹ CIC/1983, can. 1083 § 1.

⁵⁰ CIC/1983, can. 1083 § 2.

⁵¹ CIC/1983, can. 1120.

⁵² CIC/1983, can. 658 1°.

⁵³ CIC/1983, can. 1031.

⁵⁴ CIC/1983, can. 1063.

⁵⁵ CIC/1983, can. 641–53.

⁵⁶ CIC/1983, can. 232–64.

⁵⁷ “The fundamental and decisive environment, in which one forms the idea of the value and properties of marriage, is the family, where the person is raised [...]. He or she may experience a faithful and indissoluble love of parents as married spouses, he/she may feel to be always welcome, or may have an experience with something completely different, including things totally at odds with that.” Michael Slavík, *Manželství—od snů k realitě. Teologicko-právní analýza některých přístupů k uzavírání manželství* (Praha: Pastorační středisko při Arcibiskupství pražském, 1988), 54.

defined by John Paul II in his post-synodal Apostolic Exhortation on the Formation of Priests in the Circumstances of the Present Day in the following words: “The seminary is, therefore, an educational ecclesial community, indeed a particular educating community. And it is the specific goal which determines its physiognomy: the vocational accompanying of future priests, and therefore discernment of a vocation; the help to respond to it and the preparation to receive the sacrament of orders with its own graces and responsibilities [...]. Inasmuch as it is an educating community, the seminary and its entire life—in all its different expressions—is committed to formation, the human, spiritual, intellectual, and pastoral formation of future priests.”⁵⁸

The 1917 Code did not contain any canon about a complex preparation for contracting a marriage, while some regulations about educating candidates for priesthood in seminaries paid attention even to some details: “The seminary officials should insist upon the rules of genuine Christian politeness and excite the students to imitation by their example. They should also exhort them to observe the rules of hygiene, be cleanly in dress and appearance, and practice courtesy joined with modesty and gravity.”⁵⁹ However, the Church is—in the words of the current Code—obliged to accompany the spouses on the journey of their lives. Pastors of souls are thus obliged to make sure the Christian community provides “help offered to those who are married, so that faithfully preserving and protecting the conjugal covenant, they daily come to lead holier and fuller lives in their family.”⁶⁰

The Need for a Full Sacramental Life

For Catholic spouses, the sacramental life has immense significance. Sacraments should also introduce the nupturients into the sacramentality of marriage: “Catholics who have not yet received the sacrament of confirmation are to receive it before they are admitted to marriage if it can be done without grave inconvenience. To receive the sacrament of marriage fruitfully, spouses are urged especially to approach the sacraments of penance and of the Most Holy Eucharist.”⁶¹ In this context, we should also recall the doctrine of Vatican II about the proper link between celebrating the sacraments with the faith of

⁵⁸ *Pastores dabo vobis*. Post-Synodal Apostolic Exhortation of John Paul II about the Formation of Priests in the Circumstances of Today, art. 61.

⁵⁹ CIC/1917, can. 1369 § 2.

⁶⁰ CIC/1983, can. 1063 4°.

⁶¹ CIC/1983, can. 1065, § 1–§ 2.

those who confer them and those who accept them: “They not only presuppose faith, but by words and objects they also nourish, strengthen, and express it; that is why they are called ‘sacraments of faith.’ They do indeed impart grace, but, in addition, the very act of celebrating them most effectively disposes the faithful to receive this grace in a fruitful manner, to worship God duly, and to practice charity.”⁶²

However, nowadays the problem are marriages of Catholics, who were baptised after birth, but do not practice their faith any longer, do not live by it, nor do they participate on the sacramental life of the Church.⁶³ Nevertheless, even these Christians have the right—and strictly speaking also a duty—to contract their marriage canonically: “Even if only one party is Catholic, the marriage of Catholics is governed not only by divine law but also by canon law, without prejudice to the competence of civil authority concerning the merely civil effects of the same marriage.”⁶⁴ If one of the parties is not Catholic—as the quoted regulation also presupposes—the danger of deflecting from the faith is even higher. Such marriages, contracted after having been granted the dispensation *disparitatis cultus*⁶⁵ are not sacramental; they are only canonical, that is, fulfilling the requirements of the Canon Law. (They can become sacramental, if the non-baptized party is later baptized.) Potential compromises of the contrahents are accommodated for example by the regulation about the place of the nuptials, whereby “a marriage between a Catholic party and a non-baptized party can be celebrated in a church or in another suitable place.”⁶⁶ The esthetic aspect and impressive festivity of wedding rites in the Church lead to their extraordinary popularity also in an environment alienated from the faith.⁶⁷ It is clear that un-

⁶² *Sacrosanctum concilium*, 59.

⁶³ “A typical problem today is marriage of Christians, i.e. those who are baptised, but have no faith. This is particularly true of *baptised Catholics*. Can a baptised Catholic who has lost his/her faith contract a valid marriage? In other words, does the sacramentality of marriage depend solely on the baptism of contrahents or a faith *in actu* is needed? In order not to exclude the issues related to these questions, it is necessary to mention (not to make this question unsolvable) that the fact of the absence of faith brings along a plethora of meanings, including various subjective and psychological situations whereby every one could lead to different reactions to the given problem.” Mario F. Pompedda, “Mancanza di fede e consenso matrimoniale,” in *Studi di diritto matrimoniale canonico* (Milano: Giuffrè, 1993), 398–448, 403.

⁶⁴ CIC/1983, can. 1059.

⁶⁵ Cf. CIC/1983, can. 1086.

⁶⁶ CIC/1983, can. 1118.

⁶⁷ “Although divorce and second or third marriage is nothing exceptional in our society, wedding is still considered a unique event (this concrete couple gets really married only once), therefore the cultural pressure on experiencing the uniqueness of the moment is quite strong. This is documented in the willingness to pay the expenses of the whole celebration and in the choice of the environment—not only a church, but also castles and chateaux or a special place in the countryside are on demand. Apart from that, a lot of people in the process of getting married—who are not really acquainted with the Christianity—are convinced that to make

der these circumstances the preparation of the betrothed couple and the actual celebration of the wedding can present a certain pastoral opportunity, however, in a rather limited way.

The cases where the nupturients are seeking closer attitude to the faith present a different category. For example, preparation for the sacrament of confirmation can be partially thematically mingled with marriage preparation: “Proximate preparation can be suitably carried out within the framework of a thorough preparation for the sacrament of confirmation of those who were baptized as infants. For young people, who are first in touch with the Church via free-time or similar activities, such preparation can be a pre-catechumenal journey, or a journey to a ‘catechumenate of the baptized’ for those who were baptized, but had not been ‘formed in the Christian faith.’⁶⁸ One of the goals of the preparation for confirmation is discerning the vocation to marriage or to priestly or consecrated life: “The preparation for confirmation is a relatively good opportunity to help an adolescent to progress from childlike faith to the faith of an adult. It is also important for him/her to encounter topics, e.g. choosing the state of life or finding one’s own place and mission in the Church.”⁶⁹

For those in civil marriage who got divorced and remarried, and subsequently convert to the Catholic faith, the Church applies annulment of their marriage in favor of their faith, namely, the so-called *privilegium paulinum*, inspired by Paul’s extract from the First epistle to the Corinthians (1 Cor 7:12–16). These are very often people getting ready for baptism in the catechumenate; however, their divorced status protects them from receiving baptism in the catechumenal process with all the consequences for their sacramental life.⁷⁰ The Church considers

the wedding meaningful, the circumstances of contracting it should be somehow exclusive. Weddings taking place in municipal councils or town halls are considered so formal (“just official”) that most people find it redundant. Therefore, it sometimes happens that a church wedding is required even from a couple where neither is baptised.” Aleš Opatrný, “Mohou být setkání s účastníky pohřbů, svateb a půlnočních mší evangelizační neb pastorační šancí?” in *Pronikavá změna pastorace, nebo sebezáchovný provoz? Být církví misionářským způsobem*, Zdeněk Demel and Karl Schlemmer (České Budějovice: Teologická fakulta Jihočeské univerzity, 2005), 105–14.

⁶⁸ ČBKS měrnice ČBK pro přípravu na svátost manželství, č. 4.3, p. 8.

⁶⁹ *Směrnice pro udílení svátostí v Arcidiecézi pražské*, in *Sbírka právních norem Arcidiecéze pražské z let 1945–2009*, ed. Marie Kolářová (Praha: Arcibiskupství pražské, 2009), 87–106, 94–95.

⁷⁰ “The problem is not a single man/woman or someone married in their first or functional marriage that is getting ready for receiving the initial sacrament of baptismal rebirth in the catechumenate. However, there are different cases: a divorced candidate, i.e. someone who is bound by his/her previous marriage bond. It is necessary to proceed with caution and responsibly find out about his/her legal status, so that the existence of the first marriage would not cause a difficult and painful situation after baptism whose core is the inability to receive sacraments for the lasting bond of marriage.” Jiří Svoboda, *Aplikace privilegia sv. Pavla podle kán. 1143–1147 CIC a kán. 854–856 CCEO*, *Revue církevního práva* 24–1 (2003): 16.

their marriage as indissoluble, since the Gospel maxim: “Therefore what God has joined together, let no one separate” is valid for them as well (Mt 19:6b). Such marriage is called “natural,”⁷¹ the old Code uses the term “legitimate”: “Marriage between the non-baptised validly celebrated is called *legitimate*.”⁷² In the 1983 Code, the initial state, on the basis of which the privilege can be granted, is defined in the following words: “A marriage entered into by two non-baptized persons is dissolved by means of the Pauline privilege in favor of the faith of the party who has received baptism by the very fact that a new marriage is contracted by the same party, provided that the non-baptized party departs.”⁷³ In a situation, when the non-baptised spouses who celebrated civil marriage after divorce, one cannot re-establish their cohabitation without offending the Creator (*sine contumelia Creatoris*), as it is expressed in a traditional canonistic formula.⁷⁴ Settling the Pauline privilege thus becomes easier, moreover, it takes place on the diocesan level and the competent authority is the local Ordinary.⁷⁵

Other complicated and pastorally difficult problems are solved on the level of the entire Church, using the rescript of the Congregation for the Doctrine of the Faith. This is the so-called *privilegium petrinum*, whose designation is analogical to the Pauline privilege.⁷⁶ The recent legal regulation can be found in the document “Norms on the Preparation of the Process for the Dissolution of the Marriage Bond in Favor of the Faith” from 2001.⁷⁷ These norms define the initial

⁷¹ “The Church has always accepted marriages of the non-baptized as an institution of natural order, i.e. the ability of these spouses to live in a faithful and in indissoluble marriage in accordance with the natural law. The Church respects such marriages as naturally valid.” Marie Kolářová, “Konvertita žijící v neplatném manželství,” in *Revue církevního práva* 56–3 (2013): 7.

⁷² CIC/1917, can. 1015 § 3.

⁷³ CIC/1983, can. 1143 § 1.

⁷⁴ Cf. CIC/1983, can. 1144 2°.

⁷⁵ “The requirement for the validity of the new marriage is interpellating the non-baptized party, whether this party is willing to accept baptism or live with the baptized party ‘without offending the Creator.’ If the answer is negative to this official interpellation, the baptized party is granted the right to contract a new marriage, but principally with a Catholic. For a new marriage, an authorization is required from the ordinary (the common expression is: permission for application of the Pauline privilege). Nevertheless, the original (natural) marriage is not ended as a consequence of this permission (which is basically a certificate), but in the act of contracting a new marriage, i.e. ipso facto.” Ignác Antonín Hrdina, “Manželství v současném českém i kanonickém právu,” *Revue církevního práva* 16–2 (2000): 91–104.

⁷⁶ “Situations to which the studied norms remind us of the annihilation of marriage *in favorem fidei* using the Pauline privilege. The norms have this goal—*in favorem fidei*—in their own title. The annihilation of marriage in favor of the faith with the decision of the pope began to be unofficially, but fittingly be called *privilegium petrinum*.” Jiří Kašný, “Zrušení manželství in favorem fidei,” *Revue církevního práva* 25–2 (2003): 83–94.

⁷⁷ “Normae de conficiendo processu pro solutione vinculi matrimonialis in favorem fidei,” in *Revue církevního práva* 25–2 (2003): 107–115.

configuration: “A marriage entered into by parties, of whom at least one is not baptized, can be dissolved in favor of the faith by the Roman Pontiff, provided that it has not been consummated after both parties have received baptism.”⁷⁸ The condition fixed here is based on the fact that baptism of two baptized are absolutely indissoluble. The character of the privilege is also mirrored in investigating whether the guilt of the petitioner “the petitioner was not exclusively or predominantly the culpable cause of the breakdown of the conjugal life, and that the party with whom the new marriage is to be contracted or convalidated was not at fault in provoking the separation of the spouses.”⁷⁹ While *privilegium paulinum* helps solve the situation especially for the catechumens, *privilegium petrinum* is conceded in favor of the marriage, which the applicant wants to contract with a third person, baptized in the Catholic Church and wishing to live in a canonical marriage, including full participation on the sacramental life of the Church.

Other aids for the realization of sacramental life are convalidations or sanations of marriages. The prerequisite of these legal means is lasting desire to live together: “Even if a marriage was entered into invalidly by reason of an impediment or a defect of form, the consent given is presumed to persist until its revocation is established.”⁸⁰ The baptized husband living in marriage celebrated not in the canonical form wants to be admitted to the sacraments, nevertheless, he finds out that he was not wedded *coram Deo*. Two possibilities are open. If the second party is willing to “celebrate the marriage in the church” again, he or she proceeds to convalidation, that is, to a simple validation of the marriage (*convalidatio simplex*).⁸¹ If the second party is not ready, or one can reasonably suppose it will not be willing, the Catholic party can petition for a validation in the fundamental sanation.⁸² “The radical sanation of an invalid marriage is its convalidation without the renewal of consent, which is granted by competent authority and entails the dispensation from an impediment, if there is one, and from canonical form, if it was not observed, and the retroactivity of canonical effects. Convalidation occurs at the moment of the granting of the favor. Retroactivity, however, is understood to extend to the moment of the celebration of the marriage unless other provision is expressly made.”⁸³ Here also one needs to presuppose that the spouses will persevere in

⁷⁸ “Normae,” art. 1.

⁷⁹ “Normae,” art. 4.2.

⁸⁰ CIC/1983, can. 1107.

⁸¹ Cf. CIC/1983, can. 1156–160.

⁸² “Situations in which a renewal of consent using the canonical form is necessary, but one of the partners rejects it or it is not suitable to request it or to announce the invalidity of marriage (especially if everything religious or ecclesiastical is rejected) is frequent.” Damián Němec, “Manželské právo,” 163.

⁸³ CIC/1983, can. 1161, § 1–§ 2.

mutual consent, which is the “root” of their marriage, that is why it is known as “radical” (*in radice*).⁸⁴

Mixed Marriages

For contracting a marriage between a Catholic and non-Catholic party, the 1917 Code required a dispensation from the impediment known as *mixta religio* (mixed religion), without which such marriage would be invalid. It also vigorously warned Catholics from contracting such marriages: “Most severely does the Church prohibit everywhere that marriage be entered into by two baptised persons one of whom is Catholic and the other belonging to a heretical or schismatical sect; indeed, if there is a danger of perversion to the Catholic spouse and children, that marriage is strictly forbidden also by the divine law.”⁸⁵ According to the new Code, for contracting mixed marriage (*matrimonium mixtum*) one only needs a licence of the local Ordinary, whose absence would cause a mere impermissibility, but not invalidity of such a marriage: “Without express permission of the competent authority, a marriage is prohibited between two baptized persons of whom one is baptized in the Catholic Church or received into it after baptism and has not defected from it by a formal act and the other of whom is enrolled in a Church or ecclesial community not in full communion with the Catholic Church.”⁸⁶

Laxing the discipline in contrast to the earlier regulation in the Canon Law is the fruit of implementing ecumenical efforts formulated by the declaration of the decree on ecumenism of Vatican II *Unitatis redintegratio*,⁸⁷ into the normativity of the Canon Law. However, even the new regulation cannot eliminate some fundamental differences in the understanding of the marriage as such: this is different in non-Catholic churches themselves, but also in relation to the concept found in the Catholic Church.⁸⁸ Negative evaluation of mixed marriages can

⁸⁴ Cf. CIC/1983, can. 1161, § 3.

⁸⁵ CIC/1917, can. 1060.

⁸⁶ CIC/1983, can. 1124.

⁸⁷ *Dokumenty II. vatikánského koncilu* (Kostelní Vydří: Karmelitánské nakladatelství, 2002), 433–57.

⁸⁸ “Is it right on our side to presuppose that the marriages are sacramental, although a common faith of a given community denies that marriage is a sacrament? Should we still presuppose an implicit intention to contract an indissoluble marriage, even though the tradition of a religious community considers marriage to be dissoluble?” Ladislav Örsy, “Ecumenism and Marriage,” in *The New Code of Canon Law. Proceedings of the 5th International Congress of Canon Law, organized by Saint Paul University and held at the University of Ottawa, August 19–25, 1982*

still be found,⁸⁹ while some expectations are—contrariwise—too optimistic.⁹⁰ The decisive significance has the position found in the exhortation *Familiaris Consortio* of John Paul II: “Marriages between Catholics and other baptized persons have their own particular nature, but they contain numerous elements that could well be made good use of and developed, both for their intrinsic value and for the contribution that they can make to the ecumenical movement. This is particularly true when both parties are faithful to their religious duties. Their common Baptism and the dynamism of grace provide the spouses in these marriages with the basis and motivation for expressing their unity in the sphere of moral and spiritual values. For this purpose, and also in order to highlight the ecumenical importance of mixed marriages which are fully lived in the faith of the two Christian spouses, an effort should be made to establish cordial cooperation between the Catholic and the non-Catholic ministers from the time that preparations begin for the marriage and the wedding ceremony, even though this does not always prove easy.”⁹¹

Legal regulation of the old Code made it difficult to contract a mixed marriage through the requirement imposed on the non-Catholic party to “give precaution to remove the danger of perversion from the Catholic spouse, and from both spouses [there is a promise] that all children will be baptised only Catholic and so educated.”⁹² It is clear that between the betrothed couple of two different Christian denominations there is a certain “strategic agreement.”⁹³ The meaning of the warranties given by the Catholic party cannot be a categori-

(vol. II), ed. Michel Thériault and Jean Thorn (Ottawa: Faculty of Canon Law, University of Saint Paul, 1986), 1043.

⁸⁹ “We should openly admit that the Church is not blessed by such marriages because the drama of division amongst Christians is thus brought directly into the marriage and the family formed by this marriage. The practice clearly shows that these families experience frequent rows over religion and faith. As a consequence, it is manifested with lack of affection or downright religious indifference.” Duda, *Katolicke manželské právo*, 228.

⁹⁰ “Saint Paul wrote the following words about a marriage between a believer and an unbeliever: ‘For the unbelieving husband has been sanctified through his wife, and the unbelieving wife has been sanctified through her believing husband. Otherwise your children would be unclean, but as it is, they are holy.’ If God’s gifts can be abundant in the case of marriages with impediments known today as *disparitatis cultus*, the more abundant can they be in the case of two believers belonging to two different Christian communities, however, joined together through sacrament.” Ladislav Örsy, *Ecumenism and Marriage*, 1045.

⁹¹ FC, art. 78.

⁹² CIC/1983, can. 1125 1°.

⁹³ “This situation brings some Christians into impossible situations, for example, if the non-Catholic partner insists beforehand that children will be brought up on the basis of a non-Catholic doctrine. We need to base this on the fundamentals of the sacrament of baptism obliging both partners to educate their children in Christ’s spirit, even if they encounter a number of difficulties in the education. Anyway, the discussion on the topic of baptism and educating children prior to contracting a marriage is very desirable and inspiring for both sides.” Josef

cally adamant decision to enforce the Catholic education of the children, which could result in a breakdown of the marriage. This is reflected in the adjusted text of the oath: “I hereby declare that in the intended marriage I will keep and develop my faith and live in accordance with it. I will sincerely try—as my faith requires—baptizing and bringing up all our offspring in the Catholic Church. I will respect the religious freedom and the freedom of conscience of my partner and will take care of the unity and stability of the marriage and of keeping the family community.”⁹⁴ Moreover, the ecumenical directory refers to the fact that the non-Catholic party can feel the responsibility in the other direction: “At the same time, it should be recognized that the non-Catholic partner may feel a likely obligation because of his/her own Christian commitment.”⁹⁵

The Catechism of the Catholic Church reflects the pastoral situation in the countries where mixed marriages are contracted: “Through ecumenical dialogue Christian communities in many regions have been able to put into effect a *common pastoral practice for mixed marriages*. Its task is to help such couples live out their particular situation in the light of faith, overcome the tensions between the couple’s obligations to each other and towards their ecclesial communities, and encourage the flowering of what is common to them in faith and respect for what separates them.”⁹⁶ However, it is clear that churches where the ecumenical dialogue is not reflected in the pastoral consequences do not participate on such common pastoral activity anyway.⁹⁷

The new Code also confirmed the possibility of further easement in relation to contracting a marriage: “If grave difficulties hinder the observance of canonical form, the local ordinary of the Catholic party has the right of dispensing from the form in individual cases, after having consulted the ordinary of the place in which the marriage is celebrated and with some public form of celebration for validity. It is for the conference of bishops to establish norms by which the aforementioned dispensation is to be granted in a uniform manner.”⁹⁸ The appropriate “norms for granting the dispensation in a uniform manner” formulate the cases of the “grave difficulties” allowing for a dispensation: “(1) if the non-

Dolista, *Naděje vložená do manželství (Teologicko-pastorální studie)* (Olomouc: Maticе cyrilometodějská, 1994), 172.

⁹⁴ “Text příslibu dle kánonu 1125 CIC (Rozhodnutí ČBK dle kánonu 1126 CIC),” in Marie Kolářová, ed., *Sbírka právních norem*, 178.

⁹⁵ *Directory for the Application of Principle and Norms on Ecumenism*, art. 150.

⁹⁶ CCC, art. 1636.

⁹⁷ “Although under certain circumstances the Church is directly forced to tolerate such marriages, under no circumstances can she abandon Gospel criteria of Christian life. In every individual case it has hope that in the end, the non-Orthodox party will accept Orthodoxy to realize the fullness of faith and thus also the mystery of marriage.” Peter Kormaník, *Základné sväté tajiny pravoslávnej cirkvi (Teologicko-praktický výklad)* (Prešov: Pravoslávna bohoslovecská fakulta, 1996), 165.

⁹⁸ CIC/1983, can. 1127 § 2.

Catholic party fundamentally rejects to contract a marriage using the canonical form and the Catholic party is firmly determined; (2) if the canonical form is refused by the non-Catholic party who lives considerably better than the Catholic party; (3) if keeping the canonical form causes a grave rift in the family of one of the betrothed; (4) if the non-Catholic party has a special position in his/her own church or religious community (a pastor, a commission member, a senior etc.).⁹⁹ If the canonical form is kept, the question is raised about the possible participation of the non-Catholic party on receiving the Eucharist: “Because of problems concerning Eucharistic sharing which may arise from the presence of non-Catholic witnesses and guests, a mixed marriage celebrated according to the Catholic form ordinarily takes place outside the Eucharistic liturgy. For a just cause, however, the diocesan bishop may permit the celebration of the Eucharist. In the latter case, the decision as to whether the non-Catholic party of the marriage may be admitted to Eucharistic communion is to be made in keeping with the general norms existing in the matter both for Eastern Christians and for other Christians, taking into account the particular situation of the reception of the sacrament of Christian marriage by two baptized Christians.”¹⁰⁰ Particular law presupposes that such a community in sacraments (*communicatio in sacris*) can be granted with the permission of the ordinary in case of grave spiritual need at the celebration of a mixed marriage.¹⁰¹ In the case of a “seriously grave need,” the non-Catholic party may be allowed to receive sacraments in the Catholic Church for “strengthening the life of grace and faith in confessionally mixed families.”¹⁰² Such sacramental help, however, should be accompanied with pastoral care and the interest of individual church communities in the married couple who themselves experience the reality of the divided Christendom.¹⁰³

⁹⁹ “Normy pro jednotné udělování dispenze od kanonické formy (Rozhodnutí ČBK dle kánonu 1127 § 2 CIC),” in Marie Kolářová, ed., *Sbírka právních norem*, 176–77.

¹⁰⁰ *Directory for the Application of Principle and Norms on Ecumenism*, art. 159.

¹⁰¹ “Společenství ve svátostech s křesťany jiných církví — B. Směrnice stanovené Českou biskupskou konferencí, 2a,” in *Sbírka právních norem*, ed. Marie Kolářová, 110.

¹⁰² *Směrnice stanovené Českou biskupskou konferencí, 2c*, in *Text příslibu dle kánonu 1125 CIC, Sbírka právních norem*, 178.

¹⁰³ “Anyway, it is clear that mixed families carry the burden of the separation which they themselves did not cause; they became a sort of an outpost, an avant-garde in the effort for unity and a laboratory of the struggle for a common faith. Therefore, one may not be reconciled with an opinion that it is something desperate or impermissible. On the contrary, it is to be welcome that marriage is entered by two Christians, however different their denominations. For sure, they are going to be faced with special difficulties which do not have those who contracted a marriage with a partner of the same Church. The burden of the struggle will also be carried by the community accompanying their marriage. If they are given no effective support in the struggle for individual faith and for the faith of their children, such a family may end up with no relationship to either of the churches; regrettably, there are numerous examples.” Pavel Filipi, *Po ekumenickém chodníku. Příručka ke vztahům a možnostem spolupráce mezi církvemi* (Praha: Kalich, 2008), 36.

Conclusion

At the first sight, it may seem that canon law in relation to matrimony creates an almost oversophisticated system whose opacity hinders effective pastoral application. Nevertheless, it is clear that every one of these legal institutions and procedures can help both the betrothed and the married couple if it is applied suitably and at the right time. This is clear already in the “technical” process in delineating the canonical parameters of the contracted marriage: “What is legally required for a valid and permissible contraction of marriage, can also serve to support a living faith and fruitful love among the betrothed and to form a Christian family.”¹⁰⁴ The same thing is the case of solving difficult situations which the married couple may come across. Precisely in these cases canon law can prove to be a flexible tool of pastoring marriages and families.

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¹⁰⁴ *Svatební obřady. Druhé vydání. Úvod II—Příprava na manželství*, art. 20, p. 11.

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Aspects pastoraux de l'activité du droit canonique matrimonial

Résumé

Les systèmes de valeurs qui ont eu lieu dans le monde occidental, surtout ceux des années soixante du XX^e siècle, se sont manifestés particulièrement fortement dans les relations des jeunes gens envers le mariage. À cette situation a réagi le droit canonique dans le Code de droit canonique promulgué par le pape Jean-Paul II. Le droit canonique peut être un outil efficace et important pour la prêtrise des fiancés et des époux à l'Église catholique. Cependant, une préparation soignée des couples à la vie conjugale et une surveillance spirituelle continue sont la base d'une telle prêtrise. Les voies de droit dont on parle dans le présent texte peuvent aider à résoudre une situation exceptionnelle et difficile, ainsi que faciliter l'accès à la vie sacramentaire.

Mots clés : mariage, époux, droit canonique, prêtrise, Église catholique

Stanislav Příbyl

Aspetti pastorali di diritto canonico nei confronti dell'istituzione matrimoniale

Sommario

I sistemi di valori che hanno avuto luogo nel mondo occidentale, soprattutto dagli anni '60 del XX secolo, in particolare si rilevano fortemente nei rapporti dei giovani in relazione al matrimonio. In risposta a questa situazione si è mosso il diritto canonico nel Codice di Diritto Canonico annunciato da Papa Giovanni Paolo II. Il diritto canonico può essere uno strumento efficace e importante per la tutela pastorale dei fidanzati e degli sposi nella Chiesa cattolica. La base di tale tutela pastorale è, tuttavia, un'attenta preparazione delle coppie al matrimonio e la loro costante guida spirituale. Le misure giuridiche, di cui si tratta nel presente testo, possono aiutare a risolvere difficili e insolite situazioni dei coniugi e consentire loro l'accesso alla vita sacramentale.

Parole chiave: matrimonio, diritto canonico, pastorale matrimoniale, Chiesa cattolica

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Church Teaching on Marriage and Family as an Instruction for the State Legislator in the Context of Poland

Abstract: The Church has the right and duty “always and everywhere to proclaim moral principles, even in respect of the social order” (can. 747 § 2), and the faithful are “to ensure that their actions are permeated with the spirit of the Gospel, and they are to heed the teaching of the Church proposed by the magisterium” (can. 227). The 20th anniversary of the publication of the Letter to Families from Pope John Paul II *Gratissimam Sane* is a great opportunity to recall the document and to bring to light some thoughts on family that would be useful instructions for those who, in the context of Poland, are bearing the legislative power. The paper presents five important ideas on marriage and family that must be, from catholic point of view, in some way present in state law. The ideas concern: marriage as sovereign society, marriage as heterosexual union, the threats of gender ideology for the family, the proper relations between the parents and children, and the professional work and the work within the family unit.

Keywords: *Gratissimam Sane*, John Paul II, family, marriage, law, legislation, Poland

The Importance of the Family for the State and the Church

Pope Paul VI called the Catholic Church a *humani generis ancilla*.¹ The Second Vatican Council believed that she was sent by Christ to all peoples

¹ Paulus PP. VI, *Homilia ad Patres conciliares*, December 7, 1965, Acta Apostolicae Sedis [AAS] 58 (1966): 57.

(LG 1),² and to all nations to preach the Gospel to every creature (LG 24). There is “the obligation and inherent right of the Church, independent of any human authority, to preach the Gospel to all peoples” (can. 747 § 1).³

The respect for the marriage is a common idea, both for the Church and states. Also, both the Church and states value the family very much. The Church, for example, calls the marriage and the family “one of the most precious of human values.”⁴ The family as “a community of persons and the smallest social unit” is “an institution fundamental to the life of every society.”⁵ It means that, according to the Church, the family is the primary institution of the Church society and the state society. Quite similarly, for the modern states, the family is “the natural and fundamental group unit of society and is entitled to protection by society and the State.”⁶ The sentence comes from the Universal Declaration of Human Rights (Art. 16, item 3), and although the document is not a part of international law, it has some “legal potential” and a great influence on the systems of law of many countries setting aims and establishing standards for states’ legal regulations.⁷

In light of common support for the marriage and the family, it is quite understandable that the Church fully supported the idea promoted by the United Nations Organization to announce the year 1994 the International Year of the Family.⁸ On this occasion, Pope John Paul II issued a special document—the Letter *Gratissimam Sane*. It is one of many church documents about family.⁹

² Sacrosanctum Concilium Oecumenicum Vaticanum II, Constitutio dogmatica *Lumen gentium* de Ecclesia, November 21, 1964, AAS 57 (1965): 5–75; English translation of Vaticanum II was taken from *The Documents of Vatican II*, in a new and definitive translation, with commentaries and notes by Catholic, Protestant, and Orthodox authorities, gen. ed. William Abbott (New York: Guild Press, 1966). Hereafter as LG.

³ Canons are citations from *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus*, AAS 75, part 2 (1983): 1–318; English translation: *Code of Canon Law Annotated*: Prepared under the responsibility of the Instituto Martín de Azpilcueta, ed. Ernest Caparros, Michel Thériault, Jean Thorn, Hélène Aubé, 2nd ed., rev. and updated of the 6th Spanish language edition (Montréal: Wilson & Lafleur, 2004).

⁴ Joannes Paulus PP. II, Adhortatio apostolica *Familiaris consortio* de Familiae Christianae muneribus in mundo huius temporis, November 22, 1981, AAS 74 (1982): 81–191; English translation: John Paul II, Apostolic Exhortation *Familiaris Consortio* on the Role of the Christian Family in the Modern World (Boston 1981), here no. 1.

⁵ Joannes Paulus PP. II, Litterae *Gratissimam sane* familiis datae ipso volente sacro Familiae anno MCMXCIV, February 2, 1994, AAS 86 (1994): 868–925; English translation: John Paul II, Letter to Families *Gratissimam Sane* (Washington 1994), no. 17. Hereafter as GS.

⁶ Universal Declaration of Human Rights, art. 16, item 3, accessed January 10, 2015, <http://www.un.org/Overview/rights.html>.

⁷ Roman Kuźniar, *Prawa człowieka: prawo, instytucje, stosunki międzynarodowe* (Warszawa: Wydawnictwo Naukowe “Scholar,” 2004), 66–67.

⁸ GS, no. 3.

⁹ See e.g.: Pontificio Consiglio per la Famiglia, “Carta dei diritti della famiglia,” in *Enchiridion Vaticanum*, vol. 9, ed. Bruno Testacci, Guido Mocellin (Bologna: Edizioni Dehoniane Bologna, 1988), 538–52.

The letter in question was directed mainly to the Christian families, and those who are responsible for the families on behalf of the Church, that is, bishops, priests, religious families and consecrated persons, movements and associations of the lay faithful (cf. cc. 1063, 1064, 1067). The pope addressed his voice also to “brothers and sisters united by common faith in Jesus Christ, even while not yet sharing the full communion willed by the Savior; [...] to the great community of believers in the one God; to those who are the heirs of other spiritual and religious traditions; and to all men and women of good will.”¹⁰ It means that according to the pope, the letter conveyed a very universal message beneficial to many people in different cultural, religious, and ethnic circumstances or conditions. The enunciation in question summarizes the catholic teaching about marriage and family in the context of the modern world and contemporary challenges to traditional and Christian understanding of the marriage and the family.

The 20th anniversary of the publication of the document is a great opportunity to recall some ideas of the letter and consider them as clues or hints useful for the state legislator, especially in the context of Poland.¹¹

It must be remembered that the Church is deeply convinced that she has “the right always and everywhere to proclaim moral principles, even in respect of the social order, and to make judgments about any human matter in so far as this is required by fundamental human rights or the salvation of souls” (can. 747 § 2). Exercising the right by the Church does not break the principle of autonomy and division between the state and the Church, quite widespread and highly regarded among modern states.

Law, in Polish context, separates the two communities in question. The Constitution of the Republic of Poland of 2nd April, 1997,¹² states that “the relationship between the State and churches and other religious organizations shall be based on the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as on the principle of cooperation for the individual and the common good” (Art. 25, item 3). Both, the State and the Catholic Church, agreed also in the Concordat between the Holy See and the Republic of Poland,¹³ to be, each in its own domain—“independent and autono-

¹⁰ GS, no. 23.

¹¹ See: GS no. 17 and no. 21.

¹² Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz.U. Nr 78, poz. 483 z późn. zm.); English translation of the Constitution was taken from the official website of the Polish Sejm, accessed January 11, 2015, <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

¹³ Konkordat między Stolicą Apostolską i Rzeczpospolitą Polską podpisany w Warszawie dnia 28 lipca 1993 r. (Dz.U. z 1998 r. Nr 51, poz. 318). The document was signed on July 28, 1993, and it was ratified on February 23, 1998; English translation of the document was taken from http://www.concordatwatch.eu/showtopic.php?org_id=931&kb_header_id=1331, accessed June 23, 2013.

mous.” They are fully committed to respect this principle in all their mutual relations and in co-operating for the promotion of the benefit of humanity and the good of the community (Art. 1 of the Concordat 1993).

Of course, another factor must be taken into consideration. It is a legal as well as a moral obligation of all the Catholics, namely, lay members of Christ’s faithful community, “to ensure that their actions are permeated with the spirit of the Gospel, and they are to heed the teaching of the Church proposed by the magisterium” (can. 227). The duty also binds the persons who individually hold the legislative power, or those who are members of the legislative bodies like the Polish Parliament (Sejm and Senate—the lower and higher chamber of the Parliament of Poland).

The general aim of the legislators is to work for the increase of “the common good, that is, the sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfillment” (see GS 26).¹⁴ In doing so, they have “the special obligation to permeate and perfect the temporal order of things with the spirit of the Gospel. In this way, particularly in conducting secular business and exercising secular functions, they are to give witness to Christ” (can. 225 § 2). This norm was elaborated by the Polish Episcopate in *Dyrektorium duszpasterstwa rodzin* [Guidelines for the Pastoral Care of the Family] of 2003.¹⁵ The document states that the Catholics who hold public offices such as a member of parliament, a councilor, or any other official in self-government or government are obliged, in their conscience, to support the pro-family policy.¹⁶

Law as the Regulator of the Family Matters

It is an absolute truth that, as Pope Benedict XVI once said, *L’umanità non è “senza legge”*¹⁷ (“Mankind is not ‘lawless’”). Law is a phenomenon that ac-

¹⁴ Sacrosanctum Concilium Oecumenicum Vaticanum II, *Constitutio pastoralis Gaudium et spes* de Ecclesia in mundo huius temporis, December 7, 1965, AAS 58 (1966): 1025–115.

¹⁵ Konferencja Episkopatu Polski, *Dyrektorium duszpasterstwa rodzin*, dokument przyjęty podczas 322 Zebrania Plenarnego Konferencji Episkopatu Polski dnia 1 maja 2003 r., Warszawa 2003, no. 83.

¹⁶ *Dyrektorium duszpasterstwa rodzin*, no. 83.

¹⁷ Messaggio del Santo Padre Benedetto XVI per La Celebrazione sella XLI Giornata Mondiale Della Pace, January 1, 2008, AAS 100 (2008): 44, no. 13; English translation: Message of His Holiness Pope Benedict XVI for the Celebration of the World Day of Peace, 1 January 2008, accessed January 11, 2015, http://www.vatican.va/holy_father/benedict_xvi/messages/peace/documents/hf_ben-xvi_mes_20071208_xli-world-day-peace_en.html.

companies the humankind during its entire history.¹⁸ Firstly, it must be noticed, that law itself is a value for humanity. It is the achievement of civilization and the element of culture. Law is a specific “memory bank” of the civilizations or societies like nations or tribes that keeps safe and fosters the methods and ways of conduct or behavior, which were successfully used in the past.¹⁹ Secondly, law is in mutual connection with other values important to a man, as it incorporates them into the system of values and, what is more, law is a tool for successful realization of these values in everyday life.²⁰ These two arguments clearly indicate that both from the point of view of the legislator and the addressees of law, legal regulations are important and valuable.

The connection of the legal norms with the world of values opens another important problem, namely, the problem of the subjective foundations of the legislator’s decisions in the process of drafting law. It must be remembered that the legislator cannot stay outside his own culture; also, the legislator cannot put himself completely outside his own legal culture. The legislator is always determined by his life experience, by his outlook on life, or by his religious beliefs. In short: the legislator cannot become alienated from himself.

Having this philosophical assumption in mind, it must be here noticed that the Polish Constitution of 1997 obliges public authorities, that is, also those who bear legislative power, to be “impartial in matters of personal conviction, whether religious or philosophical, or in relation to outlooks on life” (Art. 25, item 3). The obligation is, of course, typical of the modern democratic states.

From the point of view of the Catholic anthropology and philosophy, the requirement of being objective in acting can be fulfilled only by the genuine subjectivity of the subject. As it was underlined by Bernard Lonergan—“Genuine objectivity is the fruit of authentic subjectivity.”²¹ This “authentic subjectivity” means that the legislator must “know himself” and “be himself.” According to the assumption, in the act of drafting law the whole man-legislator should be engaged. He must be aware of his limits and possibilities, personal preferences and prejudices. The legislator must not try to escape from his reality but he must approach himself with “attentiveness, intelligence, reasonableness, and responsibility.”²²

Both state and church law positively recognize the basic human rights. The norms of the law are derived from the human nature and simply express it in

¹⁸ Remigiusz Sobański, “Prawo jako wartość,” *Prawo Kanoniczne* 42, no. 3–4 (1999): 11.

¹⁹ See Piotr Kroczek, “Pamięć i tożsamość w prawie kanonicznym,” in *Lex tua veritas*, ed. Piotr Majer and Andrzej Wójcik (Kraków: Wydaw. Naukowe Uniwersytetu Papieskiego Jana Pawła II, 2010), 461–66.

²⁰ Sobański, “Prawo jako wartość,” 20.

²¹ Bernard Lonergan, *Philosophy of God, and Theology* (Philadelphia: Darton, Longman and Todd, 1973), 44.

²² Bernard Lonergan, *Method in Theology* (New York: Herder and Herder, 1972), 265.

legal form. Human law, both drafted and enacted by a legislative body or made by community in form of a legal custom, can also be positive law. It means that law can create reality, not imitate it.

The process of making law should be initiated not by the particular reasons of one's ideology, but by striving for the human welfare. Such law, as a regulator of man's behaviors, has an important and responsible task in the field of the marriage and the family. The importance of the mentioned institutions for any society, the state or the Church, causes that the marriage and the family cannot be considered as the private or hermetic institutions.²³ The possibility of intervention of the society into the marriage and the family, that is, into its shape and functioning, to some degree is justified.

On the other hand, it must not be forgotten that the role of human law in the field of the marriage and the family is always subsidiary to the functions, the tasks, and the assignments given to the marriage and the family by the divine law, whether natural or positive (see can. 199, no. 2). As it was noticed by the author of Letter to the Families—"Indeed, the family is a social reality which does not have readily available all the means necessary to carry out its proper ends."²⁴ Pope John Paul II firmly stated in the Letter to the Families that "whenever the family is self-sufficient, it should be left to act on its own; an excessive intrusiveness on the part of the State would prove detrimental, to say nothing of lacking due respect, and would constitute an open violation of the rights of the family. Only in those situations where the family is not really self-sufficient does the State have the authority and duty to intervene."²⁵ The quoted sentence clearly means that the help to the families in form of legal regulations must be limited to necessary minimum. It is a completely unjustified situation when the legislator transforms himself, one can say, into "the legislative and administrative idealist." The essence of the stance in question is built on an *a priori* deep conviction that any law in force will surely guarantee that the reality will be changed in a way desired by the authorities.

The subsidiarity of the legal regulations complements and confirms the fundamental character of the natural, and by this, inalienable law of every marriage or every family.²⁶ The Church warned—"Excessive intervention by the state can threaten personal freedom and initiative. The teaching of the Church has elaborated the principle of subsidiarity, according to which "a community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of

²³ See Marek Rymśza, "Małżeństwo nie jest sprawą prywatną," *Więź* 11–12 (2009): 57–72.

²⁴ GS, no. 17.

²⁵ Ibid.

²⁶ Cf. GS, no. 16.

need and help to co-ordinate its activity with the activities of the rest of society, always with a view to the common good” (CCC, no. 1883).²⁷

The legislator must understand that, although the family is under the law in force (the church law and the state one), it is simultaneously “a firmly grounded social reality,” and also, “in a way entirely its own, [family is] a sovereign society, albeit conditioned in certain ways.”²⁸ In the letter, the pope underlines—“Indeed, the family is more a subject than any other social institution: more so than the nation or the State, more so than society and international organizations.”²⁹

The principle of sovereignty helps, according to the pope, to talk about “the rights of the family.” The rights in question “are not simply the sum total of the rights of the person, since the family is *much more* than the sum of its individual members. It is a community of parents and children, and at times a community of several generations. For this reason, its ‘status as a subject,’ which is grounded in God’s plan, gives rise to and calls for certain proper and specific rights.”³⁰ This conviction has found its expression in the Apostolic See’s document titled *The Charter of the Rights of the Family*.

Some Instructions Coming from the Letter to the Families

The Sovereignty of the Family

The first instruction that comes from the Letter to the Families relevant to the state legislator is that the family must have the sense of its own dignity, autonomy, and importance for the whole society. The pope wrote, “A truly sovereign and spiritually vigorous nation is always made up of strong families who are aware of their vocation and mission in history. The family is at the heart of all these problems and tasks. To relegate it to a subordinate or secondary role, excluding it from its rightful position in society would be to inflict grave harm on the authentic growth of society as a whole.”³¹ The sense in question can be given to the families by the law that will provide the autonomy for the family in the matters or fields in which the family can successfully act on its own.

²⁷ *Catechism of the Catholic Church* (New York 1995).

²⁸ GS, no. 17.

²⁹ GS, no. 15.

³⁰ GS, no. 17.

³¹ *Ibid.*

The state law should protect the independence of the family by preventing the strange subjects, such as government or self-government officials, to interfere with the life of the family, unless it is absolutely necessary for the protection of the essential rights of the members of the family or the family as a whole.³²

It appears that the Polish state legislator, at least in his legal assumptions, is deeply convinced about the rightness of the Church postulates in question. The law seems to respect the family as the “independent institution that takes main responsibility of the shape of the conditions of life and fate of family members.”³³ Of course, contrariwise, the conviction of the sovereignty of the family and the subsidiary role of the law enacted for the sake of the family must not paralyze the actions taken by the pro-family institutions, which are meant to provide the necessary and effective help for the families in distress or with other difficulties. Some kind of moderate state interventionism, as it was mentioned above, is necessary. Nevertheless, it is rather difficult to give sharp and certain answer to the question of when certain situations require the state intervention.³⁴

Heterosexuality of Marriage

Up till recently, it was very obvious that marriage is a heterosexual union contracted between a man and a woman. Any confirmation of this truth was considered as quite unnecessary. No one used to challenge the clear norm that comes, according to the Church, from the divine natural law and from the divine positive law (see Gen 1:27–28; Gen 2:23–24).³⁵ Also canon law confirmed this truth (see can. 1055 § 1, can. 1057 § 2).

The civil state law always used to respect God’s law in this matter. The tradition of Roman law considered the marriage as a union of a man and a woman, and the marriage was very important to the society.³⁶ This idea of marriage was

³² See art. 112³ ustawy z dnia 25 lutego 1964 r. Kodeks rodzinny i opiekuńczy (Dz.U. nr 9, poz. 59 z późn. zm.) (*The Family and Guardianship Code*) (hereinafter: FGC); English translation of the *The Family and Guardianship Code* was taken from Legalis. System Informacji Prawnej (*Legalis. System of Legal Information*).

³³ Uchwała Sejmu Rzeczypospolitej Polskiej z dnia 30 sierpnia 1996 r. w sprawie polityki państwa na rzecz rodzin (M.P. Nr 55, poz. 502) [The resolution of the Sejm of the Republic of Poland of 30 August 1996 on the state policy for families].

³⁴ See Piotr Kroczek, *Wychowanie: optyka prawa polskiego i prawa kanonicznego* (Kraków: Wydaw. Naukowe Uniwersytetu Papieskiego Jana Pawła II, 2013), 53.

³⁵ Wojciech Góralski, “Prawo Boże jako źródło kościelnego prawa małżeńskiego w Kodeksie Prawa Kanonicznego Jana Pawła II,” in *Studia nad małżeństwem i rodziną* (Warszawa: Wydaw. Uniwersytetu Kardynała Stefana Wyszyńskiego, 2007), 17.

³⁶ *Iustiniani digesta*, in *Corpus Iuris Civilis, editio stereotypa quinta*, ed. Theodorus Mommsen, vol. I (Berolini: apud Weidmannos, 1889), 1–873, here: 23, 2, 1: “Nuptiae sunt coniunctio maris et feminae et consortium omnis vitae, divini et humani iuris communicatio”; *Iustiniani*

received by the legal tradition of Europe, and is still present in the international laws (see, e.g., European Convention on Human Rights of 1950, art. 12)³⁷, and Polish state laws (see Constitution of 1997, art. 18, or art. 1 FGC).

Unfortunately, nowadays, the self-evidence of the possibility of contracting marriage by opposite sex couples only is challenged by the postulate *de lege ferenda* to allow same sex couples to enter into marriage. In many countries the postulate in question has been realized.³⁸ Law of many states in Europe (and not only on the Old Continent) grants the possibility of contracting legal marriage between the two persons of the same sex.

In the Letter to the Families, the pope addressed the controversial issue in a direct form. He wrote “Marriage, which undergirds the institution of the family, is constituted by the covenant whereby ‘a man and a woman establish between themselves a partnership of their whole life,’ and which ‘of its own very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children.’ Only such a union can be recognized and ratified as ‘marriage’ in society. Other interpersonal unions which do not fulfill the above conditions cannot be recognized, despite certain growing trends which represent a serious threat to the future of the family and of society itself.”³⁹

Gender Ideology

Usually the word ‘gender’ is used to denote ‘cultural sex.’ According to the definition of ‘gender’ given by World Health Organization, the word in question “refers to the socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate for men and women.”⁴⁰ Gender ideology,

institutiones, in *Corpus Iuris Civilis*, editio stereotypa quinta, ed. Paul Krüger, vol. I (Berolini: apud Weidmannos, 1889), 1–56, here: 1, 9, 1: “Nuptiae autem sive matrimonium est viri et mulieris coniunctio, individuum consuetudinem vitae continens”, see: Marek Kuryłowicz, “Wokół istoty małżeństwa rzymskiego,” in *Finis legis Christus. Księga pamiątkowa W. Góralskiego* (Warszawa: Wydawnictwo Uniwersytetu Kardynała Stefana Wyszyńskiego, 2009), 1149–52.

³⁷ Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and No. 14, Rome November 4, 1950, accessed January 12, 2015, <http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>.

³⁸ For examples see: Piotr Szukalski, “Rejestrowane związki osób tej samej płci we współczesnej Europie,” *Roczniki Socjologii Rodziny* 21 (2011): 169–184; *Legal Recognition of Same-Sex Relationships in Europe: National, Cross-Border and European Perspectives*, ed. Katharina Boele-Woelki and Angelika Fuchs (Cambridge: Intersentia, 2012).

³⁹ GS, no. 17.

⁴⁰ World Health Organization, *What Do We Mean by “Sex” and “Gender”?*, accessed January 9, 2010, <http://www.who.int/gender/whatisgender/en/index.html>; see: art. 3c of The Council of Europe Convention on preventing and combating violence against women and domestic violence, <http://conventions.coe.int/Treaty/EN/Treaties/Html/210.htm>.

as it is seen from the Church perspective, promotes principles contrary to the human reality and is not coherent with the integral way of thinking of a man. The ideology maintains that sex has no significance to the society, but only gender is relevant to it. It seems that according to the supporters of the ideology, gender can be freely formed and defined by the subject, independently from his or her sex, that is, detachably from the individual biological circumstances.⁴¹

The pope, as though sensing the threat of the ideology in question, wrote: “Through the communion of persons which occurs in marriage, a man and a woman begin a family. Bound up with the family is the genealogy of every individual: the genealogy of the person. Human fatherhood and motherhood are rooted in biology, yet, at the same time, transcend it.”⁴² And in other place he noticed, “when a new person is born of the conjugal union of the two, he brings with him into the world a particular image and likeness of God himself: the genealogy of the person is inscribed in the very biology of generation.”⁴³ The pope’s emphasis on the biological difference in sex as the fundamental factor for the marriage and the family, for the procreative function, as well as for education and upbringing of the children, must be taken into consideration in the process of enacting law.⁴⁴

Parents–Children Relations

Usually the state laws regulate, to some degree, relations between the parents and the children, for instance, determining the rights and the duties of parents towards children and *vice versa*. In Polish law, for example, the Family and Guardianship Code 1964 regulates parental authority, contact with a child, and maintenance obligation (see art. 87–144¹ FGC). The analysis of the provisions of the code and other laws leads to the impression that there is a tendency in legislation to overregulate the relations between the parents and the children. For instance, the provisions that contain the norms of mutual assistance in the family—“Parents and children are obliged to mutual respect and support each other” (art. 87 FGC),⁴⁵ or the obligation of obedience of the children who are

⁴¹ The Polish Episcopal Conference, *List pasterski na Niedzielę Świętej Rodziny 2013 r.* (Pastoral Letter for the Sunday of the Holy Family of 2013), accessed January 9, 2015, http://episkopat.pl/dokumenty/listy_pasterskie/5545.1,List_pasterski_na_Niedziele_Swietej_Rodziny_2013_roku.html.

⁴² GS, no. 9.

⁴³ *Ibid.*

⁴⁴ See Kroczek, *Wychowanie: optyka prawa*, 58–65.

⁴⁵ Cf. Jerzy Ignatowicz, art. 87, in *Kodeks rodzinny i opiekuńczy. Komentarz*, ed. Krzysztof Pietrzykowski (Warszawa: 2012), no. 6—“Article 87 normalizes the duty of mutual respect and support by the parents and the children.”

under parental authority to parents (art. 95 § 2 FGC).⁴⁶ These examples indicate that the Polish legislator is trying to normalize the relations which, because of their specific nature, simply fall outside the regulations and they are rather impossible to standardize.

The pope, in turn, taught that any provision that regulates the relations inside the family would be ineffective, if there would be lack of the stance of obedience to the 4th of the Ten Commandments—“Honor your father and your mother” (Ex 20:12). “This truth deserves to be emphasized and more deeply understood: indeed it brings out the importance of the fourth commandment for the modern system of *human rights*. Institutions and legal systems employ juridical language. But God says: ‘honor.’ All ‘human rights’ are ultimately fragile and ineffective if at their root they lack the command to ‘honor’; in other words, if they lack an acknowledgment of the individual simply because he is an individual, ‘this’ individual. Of themselves, rights are not enough.”⁴⁷ The pope warns against putting excessive hope in the legal regulations: “The age in which we live, notwithstanding the many juridical declarations which have been drafted, is still threatened to a great extent by ‘alienation.’ This is the result of ‘Enlightenment’ premises according to which a man is ‘more’ human if he is “only” human. It is not difficult to notice how alienation from everything belonging in various ways to the full richness of man threatens our times. And this affects the family.”⁴⁸

Gainful Employment and Work for the Family

Work is one of many aspects of human life. It is “a perennial and fundamental one, one that is always relevant and constantly demands renewed attention and decisive witness.”⁴⁹ Because of this the work is in constant reflection of the Church and it is a subject of numerous enunciations of the Magisterium.⁵⁰

⁴⁶ Cf. Krystyna Gromek, ed. art. 95, in *Kodeks rodzinny i opiekuńczy* (Warszawa: C.H. Beck, 2013), no. 3—“The obedience of the child to his/her parents is a duty of the child that comes from the parental authority.”

⁴⁷ GS, no. 15.

⁴⁸ Ibid.

⁴⁹ Joannes Paulus PP. II, Litterae encyclicae *Laborem exercens* de labore humano, September 14, 1981, AAS 73 (1981): 577–647; English translation: John Paul II, *On Human Work: Encyclical Laborem exercens* (Washington: Office of Publishing Services, United States Catholic Conference, 1981), no. 1.

⁵⁰ See, e.g., Leon XIII, Encyclical *Rerum Novarum*, May 15, 1891, in *Leonis XIII P.M. Acta*, vol. XI, Romae 1892), 97–144; Pius XI, Encyclical *Quadragesimo Anno*, May 15, 1931, AAS 23 (1931): 177–228; John XXIII, Encyclical *Mater et Magistra*, May 15, 1961, AAS 53 (1961): 401–64; Paul VI, Encyclical *Populorum Progressio*, March 26, 1967, AAS 59 (1967): 257–99;

In the context of family, Pope John Paul II wrote that among many human rights that concern family in an indirect way, the right to work is of special importance.⁵¹ In the opinion of the pope, the state—while not excluding private initiatives—can do a lot to safeguard the realization of the right in question. The help of the state can be provided to the workers in many different forms or means. They can provide, for example, some social benefits for them.⁵² The pope appealed that those who are responsible for legal regulations try to find proper solutions in this matter, because “unemployment is today one of the most serious threats to family life and a rightful cause of concern to every society.”⁵³

The pope also brought up the subject of the work of women within the family unit. He emphasized its importance and its burdensome nature. He wrote that the work should be both acknowledged and deeply appreciated. “The ‘toil’ of a woman who, having given birth to a child, nourishes and cares for that child and devotes herself to its upbringing, particularly in the early years, is so great as to be comparable to any professional work.”⁵⁴ He postulated two things. The first is that the work in question should be “clearly stated and upheld, no less than any other labor right.”⁵⁵ And the second postulate is that—“Motherhood [...] should be recognized as giving the right to financial benefits at least equal to those of other kinds of work undertaken in order to support the family during such a delicate phase of its life.”⁵⁶

Conclusion

In this day and age, one can observe many serious threats that put in danger the marriages and the families, as they are seen and defined by the Catholic Church. The situation calls for urgent attention, also from legislation point of view.

The Church has the right and the duty to demand that also the state law would support the marriage and the family. She can raise her voice in the matter of marriage and family, and loudly demand to respect the rights of the institutions, which are, in some degree autonomous and sovereign. The Church can

John Paul II, Encyclical *Laborem Exercens*, September 14, 1981, AAS 73 (1981): 577–647; John Paul II, Encyclical *Sollicitudo Rei Socialis*, December 30, 1987, AAS 80 (1980): 513–86.

⁵¹ GS, no. 17.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

also suggest legal regulations that would be effective not only in the context of Catholic families, but also non-Catholic ones. Moreover, the Catholics, who are the members of the state legislative bodies, have a very important duty that comes from their faith, which is to take proper actions to put into regulations and the practice of the users of law, the Church's teaching on the marriage and the family. This concurrent action is necessary for the good of the society as a whole.

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Piotr Kroczek

L'enseignement de l'Église sur le mariage et la famille en tant qu'indice pour le législateur national dans le contexte de la Pologne

Résumé

L'Église a le droit et le devoir d'annoncer en tout temps et en tout lieu les principes de la morale, même en ce qui concerne l'ordre social (can. 747 § 2). Par contre, les fidèles de l'Église « auront soin d'imprégner leur action d'esprit évangélique et ils seront attentifs à la doctrine proposée par le magistère de l'Église » (can. 227).

Le vingtième anniversaire de la publication de la *Lettre aux Familles* de Jean-Paul II « *Gratissimam Sane* » est une excellente occasion de rappeler ce document et de mettre en plein jour quelques réflexions sur le mariage et la famille qui peuvent faire fonction d'utiles indices à ceux qui ont le pouvoir législatif en Pologne. Le présent article présente cinq réflexions importantes sur le mariage et la famille qui du point de vue catholique doivent être présentes — au moins à un certain degré — dans le droit national. Ces réflexions concernent : le mariage comme une communauté indépendante et autonome, le mariage comme une relation hétérosexuelle, le danger pour les familles que représente l'idéologie de genre, les bonnes relations entre les parents et leurs enfants, ainsi que le travail professionnel et le travail au profit de la famille.

Mots clés : « *Gratissimam Sane* », Jean-Paul II, famille, mariage, droit, législation, Pologne

Piotr Kroczek

L'insegnamento della Chiesa sul matrimonio e la famiglia come guida per i legislatori statali polacchi

Sommario

La Chiesa ha il diritto e il dovere di proclamare sempre e ovunque i principi morali che valgono anche per l'ordine sociale (can. 747 § 2). I fedeli della Chiesa devono invece fare in modo che « le loro azioni siano animate dallo spirito evangelico e prestino attenzione alla dottrina proposta dal magistero della Chiesa » (can. 227).

Il ventesimo anniversario della pubblicazione della lettera alle famiglie « *Gratissimam sane* » di Giovanni Paolo II è un ottimo modo per ricordarsi di questo documento e per mettere in luce

idee relative al matrimonio e la famiglia, le quali possono essere utili suggerimenti per coloro che detengono il potere legislativo in Polonia. Il presente articolo presenta cinque importanti riflessioni circa sul matrimonio e sulla famiglia, che dal punto di vista cattolico devono essere presenti, anche in parte, nelle leggi statali. Queste riflessioni riguardano: il matrimonio come comunità indipendente e autonoma, il matrimonio come legame eterosessuale, il pericolo che l'ideologia gender comporta per la famiglia, il giusto rapporto fra genitori e figli e infine il lavoro professionale rispetto al lavoro per sostenere la famiglia

Parole chiave: "Gratissimam sane", Giovanni Paolo II, la famiglia, matrimonio, diritto, legislazione, Polonia

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Family as a Subject of Protection in the State Family Policy

Abstract: This article analyzes the subject of the state family policy and whether it really serves the protection of the family on the example of Poland. The research carried out leads to the conclusion that the existing state of affairs results in a “blurring” of the traditional culturally and historically conditioned concept of the family, implicitly introducing its “mental redefinition.” Behind the facade of support for the family, various forms of common coexistence are protected with increasing boldness, which also includes—pursuant to the LGBT gender perspective—same-sex couples. The current family policy is not a policy that perceives the family in a comprehensive perspective and is used for the full protection of all family life. The family, although it is a social value with established constitutional position, is not a subject of state protection and support that would be relevant for this position. The existing legal norms rather protect the interests of individual persons belonging to the family than the family as a whole. At the same time, the range of persons making up a family—according to a trend to extend the definition of a family—is increasingly widening.

Keywords: family, family policy, protection of family, gender

Introduction

The family, as the most basic social group present at each stage of human development, is the object of interest of various subjects, including the state. It seems that the state is interested in the family, perceiving the significance of the function fulfilled by the family in the society, and consequently, supports it with various means under the family policy pursued. However, the deepening crisis of marriage observed in the latest years in our society and undertaken at-

tempts to extend the definition of the family have raised the question about what is the subject of the family policy of the state and whether it really serves the protection of the family.

In an attempt to face a problem formulated in this way, one should ask several detailed questions, the answers to which will be searched using the family policy followed in Poland as an example. The questions are as follows: (1) What is the family policy? (2) What does the family policy of the state consist in and how does it manifest itself? (3) What is the subject of protection in the state family policy: is it really a family? and whether it is a family, then what kind of family it is?

The Notion of the Family Policy

The first question that needs to be answered concerns the family policy itself. The term ‘family policy’ was used in discussions over the social policy conducted in 1940s in Europe. According to the prevailing theory¹ “a family policy is the entirety of legal norms, actions, and means launched by the state in order to create appropriate living conditions for a family, its emergence, proper functioning, and satisfaction of all socially important roles.”² It can be also defined as “a sphere of purposeful activity concerning creation of conditions favoring founding and functioning of families and exerting influence of the functioning of the entire society.”³ Therefore, the following assumptions underlie the definition of the family policy: (1) a family is the basic and the most important social institution, (2) a family should be supported by the state, (3) family policy is composed of numerous policies, and it is not a single and consolidated legal act.

The term ‘family policy’ interpreted in this way should be differentiated from the ‘pro-family policy,’ as this term is not applied in the literature of the subject concerning the social policy and it is only used in a colloquial language. The term is of an evaluative nature—the social policy of the state towards the

¹ In the literature of the subject, the family policy was depicted in multiple ways (further discussed in Małgorzata Szyszka, *Polityka rodzinna w Polsce 1990–2004* (Lublin: KUL, 2008), 39–46.

² Sheila B. Kamerman, “Rodzina: problemy teorii i polityki,” in *O polityce rodzinnej: definicje, zasady, praktyka*, Materiały z Zagranicy, vol. 2, Instytut Pracy i Spraw Socjalnych (Warszawa: Instytut Pracy i Spraw Socjalnych, 1994). This definition corresponds to the definition by Adam Kurzynowski (see Kurzynowski, *Problemy rodziny w polityce społecznej* (Warszawa: Ośrodek Badań Społecznych, 1991)), 8–9.

³ Bożena Paradowska-Balcerzak, *Rodzina i polityka rodzinna na przełomie wieków*, Instytut Pracy i Spraw Socjalnych (Warszawa: Instytut Pracy i Spraw Socjalnych, 2004), 16.

,family can be regarded as pro-family policy if it fulfills clearly established aims that the state wants to achieve in terms of creating conditions for the development of a family and satisfying the living and cultural needs of the family.⁴

Contemporary democratic states perceive the importance of the function played by the family in the society, and consequently, they support it with various means under the family policy pursued. The means and instruments through which the state can implement the family policy include: legal measures, financial benefits, benefits in kind or benefits in the form of services, while it should be emphasized that the law plays a major role. Legal norms govern family relations and relations between the family and the state or other institutions, but also—through normalization of various aspects of the family functions—they are aimed at its protection.

Now I will proceed to examine the measures and instruments of the family policy on the example of the Polish state.

Legal Protection of the Family

At first glance, Polish legislation includes broadly understood protection of the family. This is expressed, first of all, in the Constitution of the Republic of Poland of 1997.⁵ While analyzing the provisions of the Constitution in the context of regulations aimed at protection of the family, it should be clearly emphasized that the Constitution explicitly specifies that marriage is a union of a woman and a man and declares that—as well as the family, motherhood, and parenthood—marriage shall be placed under the protection and care of the state.⁶ It grants the parents the right to rear their children in accordance with their own convictions, considering that limitation or deprivation of parental rights is an exceptional situation that can be affected only in cases specified by statute and only on the basis of the final court judgement. It recognizes that parents have the right to bring up their children according to their own convictions. Such upbringing shall respect the degree of maturity of a child as well as its freedom of conscience and belief and also child's convictions.⁷ It refers the above-mentioned directive to the right to ensure children a moral and religious upbringing.⁸ It imposes on

⁴ Katarzyna Głąbicka, *Polityka społeczna państwa polskiego u progu członkostwa w Unii Europejskiej* (Radom: Instytut Pracy i Spraw Socjalnych, 2004), 93.

⁵ Dz.U. 1997, no. 78, item 483 as amended. *Dziennik Ustaw Rzeczypospolitej Polskiej—Journal of Laws of the Republic of Poland*, hereafter as Dz.U.).

⁶ *Ibid.*, Art. 18.

⁷ *Ibid.*, Art. 48.

⁸ *Ibid.*, Art. 53.

the state an obligation to take the interests of the family into account in its social and economic policy. Families in difficult material and social circumstances, particularly those with many children or single parent families, shall have the right to receive special assistance from public authorities.⁹ The Constitution ensures protection of the rights of the child—everyone has the right to demand from public authority bodies the defence of children against violence, cruelty, exploitation, and depravation. A child deprived of parental care shall have the right to care and assistance provided by public authorities.¹⁰

Besides constitutional provisions, regulations concerning in its assumptions the protection of the family are directly included also in family law, indirectly in material civil law, in the civil procedure, in labor law, in material and procedural criminal law, as well as in criminal punishment law. Implementation of constitutional principles of family protections also depends on regulations included in a series of other normative acts, including tax, security or tenancy law.

Family and Guardianship Code

The provisions of the Family and Guardianship Code,¹¹ which is the basic legal act defining family relations in Poland, govern such crucial areas of family life as the subject matter of contracting and cessation of marriage, property relations between spouses, alimony obligations, descent of a child, institutions of adoption, care and guardianship, etc. Protection of the family included in the regulations of the aforementioned act is based on such principles as:

- principle of the child's welfare, that is, the dictate to be guided by the criterion of the best protection of the child's interests in activities of public and private institutions, for example in social welfare, court acts, decisions of administrative authorities, and legislative bodies;
- the principle of autonomy of the family in relation to external influence, including the state, that is, the prohibition to interfere into the family matters without a justified reason;
- the principle of the primacy of the family in rearing children;
- the principle of monogamy;
- the principle of the secular character of the family law, that is, granting the authority of state bodies to settle family cases;
- the principle of equality of spouses in their mutual relations and towards children;
- the principle of durability of the marital union.

⁹ Ibid., Art. 71.

¹⁰ Ibid., Art. 72.

¹¹ The Family and Guardianship Code Act of 25 February 1964 (Dz.U. 1964, no. 9, item 59 as amended); hereafter as FGC.

Civil Code and the Code of Civil Procedure

As regards civil law,¹² the regulations that should be emphasized, among others, concern minors in legal transactions and principles of the inheritance law. The interest of the family is protected, for example by statutory inheritance occurring in a situation of lack of a testament, when under the act, children of the testator and the spouse are appointed to inherit in the first place.¹³ On the other hand, in case of a testament that omits family members, law provides for a protective institution—legitimate portion. Family members excluded from inheritance are then entitled to address the claim to the inheritor to pay the sum of money specified in provisions.¹⁴

The civil procedure also includes regulations affecting the position of the family. The example here is statutory exemption from payment of court costs for persons applying for paternity proceedings,¹⁵ as well as the possibility of appearing in these cases in the capacity of the plenipotentiary of the proper representative for social welfare of the municipal authority, as well as the social organization aimed at providing support to the family.

Labor Code

The Labor Code¹⁶ protects the interests of the family, in particular through protection of motherhood and of women's health. The provisions of Chapter VIII "Protection of Women's Work" specify, among others, that pregnant women cannot be employed overtime at night or delegated beyond the permanent place of work without their consent. The employer is obliged to transfer a pregnant woman to alternative position if it is medically necessary. The employer is obliged to release a pregnant employee from work to attend medical examinations ordered by a physician in relation to the pregnancy. Additionally, the provisions of the Labor Code provide a guarantee for obtaining a maternity leave and for granting parental leave.¹⁷

¹² The Civil Code Act of 23 April 1964 (Dz.U. 1964, No. 16, item 93 as amended); hereafter as CC.

¹³ CC, Art. 932–933.

¹⁴ CC, Art. 991.

¹⁵ As set forth in Art. 96 par. 1, point 1 and 2 of the Act on Court Costs in Civil Cases of 28 July 2005 (Dz.U. 2005, No. 167, item 1398).

¹⁶ Act of 26 June 1974 (Dz.U. 1974, no. 24, item 141 as amended); hereafter as LC.

¹⁷ LC, Art. 176–89.

Penal Code

The family is also protected in broadly understood penal law.¹⁸ Within this area, the legislator does not only aim at protection of significant attributes of the family, but also provides for a specific model of behaviors and an appropriate level of relation occurring within it. In the Penal Code¹⁹ there can be singled out such provisions that aim both at penal protection of the personal status of the family (prohibition of bigamy,²⁰ prohibition of organizing adoption against the provisions of the act²¹), as well as protection of the procreation function of the family (penalization of termination the pregnancy without the consent of the mother²² and with consent of the mother, but in violation of the Act of 7 January 1993 On Family Planning, Protection of the Human Fetus and Conditions for Permissibility of Abortion,²³ determining the crime of infanticide during the delivery and under the influence of its course²⁴), and the protection of the guardianship and upbringing function (the crime of abandoning a child under 15 years of age or a person who is helpless by reason of his or her mental or physical condition,²⁵ the crime of abducting a child under 15 years of age,²⁶ the crime of exposing a person under his or her care to an immediate danger of loss of life or a serious impairment of health²⁷), as well as the protection of the functioning of the family (prohibition of abuse,²⁸ prohibition of incest,²⁹ prohibition of sexual abuse of children,³⁰ prohibition of using children in pornography,³¹ prohibition of child prostitution,³² prohibition against providing minors with alcohol,³³ penalization of maintenance payment avoidance³⁴). Also (according to the assumption), the solutions adopted in an amended Act of 10 June 2010 are aimed at increasing the efficiency of counteracting domestic violence on Counteracting Domestic

¹⁸ More about the legal and penal protection of the family see Sławomir Hypś, *Ochrona rodziny w polskim prawie karnym* (Lublin: KUL, 2012).

¹⁹ Act of 2 June 1997 (Dz.U. 1997, no. 88, item 553); hereafter as PC.

²⁰ PC, Art. 206.

²¹ PC, Art. 211a.

²² PC, Art. 153.

²³ Dz.U. 1993, no. 17, item 78 as amended; Art. 152 PC.

²⁴ PC, Art. 149.

²⁵ PC, Art. 210.

²⁶ PC, Art. 211.

²⁷ PC, Art. 160.

²⁸ PC, Art. 207.

²⁹ PC, Art. 201.

³⁰ PC, Art. 197 § 3, point 2, Art. 199 § 2 and 3, Art. 200.

³¹ PC, Art. 202.

³² PC, Art. 204.

³³ PC, Art. 208.

³⁴ PC, Art. 209.

Violence.³⁵ Recognizing that domestic violence breaches fundamental human rights, including the right to life and health and respect for personal dignity, public authorities are to ensure to all citizens equal treatment and respect for their rights and freedoms, the above-mentioned act is also aimed at initiating and supporting activities consisting in improving the social awareness as regards causes and results of domestic violence.

Code of Criminal Procedure

The Code of Criminal Procedure³⁶ also includes finding provisions aimed at the protection of the family. This can be proved by the existence of the right to refuse to testify, which the next of kin of the accused is entitled to,³⁷ as well as the existence of the right to decline to answer a question, if such an answer might expose the next of kin to liability for an offence or fiscal offence.³⁸

Executive Penal Code

The concern of the legislator for maintaining family ties in case of separation caused by serving an imprisonment sentence can be found in regulations of the criminal punishment law. As an example it should be indicated that the Executive Penal Code³⁹ in Art. 105 § 1 clearly sets forth that the convict should be provided with the possibility to maintain links first of all with the family and with other close friends through visits, telephone calls, parcels, and money orders, and in justified cases, upon consent of the director of the penitentiary facility, also through other means of communication. To maintain the links with the family of a person sentenced for unconditional imprisonment there are also applied solutions adopted in the Act of 7 September 2007 on serving a custodial sentence beyond the penitentiary facility in the system of electronic tagging.⁴⁰ Pursuant to Art. 6 §1 of this Act, the penitentiary court can allow the convict to serve a custodial sentence not exceeding one year in a system of electronic tagging.⁴¹

³⁵ Dz.U. 2010, no. 125, item 842.

³⁶ The Code of Criminal Procedure Act of 6 June 1997 of 1997 (Dz.U. no. 89, item 555); hereafter as CCP.

³⁷ CCP, Art. 182 § 1.

³⁸ CCP, Art. 183 § 1.

³⁹ The Executive Penal Code Act of 6 June 1997 (Dz.U. 1997, no. 90, item 557); hereafter as EPC.

⁴⁰ Consolidated text Dz.U. 2010, no. 142, item 960.

⁴¹ Serving the sentence in this system consists in that the convict is obliged to stay in the flat established by the court as the place of serving the sentence, and can leave it only at precisely

In the period of imprisonment of any of its members, the family can rely on the support of the state within the support provided from the Post-Penitentiary Assistance Fund.⁴² Such aid can be used by a family of an imprisoned person by no more than for three months as of the day of placing the convict in the penitentiary facility or in the remand center. However, this period can be extended up to six months in case of particular circumstances, such as disease or temporary unfitness to work.

Other Support from the State

The state care for the family is not exclusively confined within the normative sphere. The family is the subject of concern of the state also in its economic and social dimensions. Economic and social instruments of the family policy of contemporary democratic states may include financial benefits, benefits in kind, and benefits in the form of services.⁴³

While analyzing the family policy of Poland in the last thirty years, the following instruments of support for families should be observed:

- cash benefits in the form of allowances, allowances for a disabled child, childcare during parental leave, single parent supplement, new school year allowance, taking up learning by a child outside the place of residence, newborn allowance;
- means making it possible to reconcile one's professional career with family life in the form of maternity leave and allowance, parental leave and allowance, guardianship allowance;
- tax credits consisting in joint taxation of spouses and single parents, exempting family benefits from taxation;
- benefits in kind delivered to families, for example in the form of clothes, fuel, and food;
- services and benefits in the field of education and health care carried out through various institutions, such as day nurseries, kindergartens, school common rooms, primary schools, junior secondary schools, educational and

specified hours and in a precisely specified purpose, e.g. to perform work. The behavior of the convict is supervised by the probation officer.

⁴² Pursuant to Art. 43 of the Executive Penal Code, the Post-Penitentiary Assistance Fund is a state special purpose fund. It is managed by the Minister of Justice. Revenues of the Fund mainly consists of the moneys originating from deduction of 20 percent of remuneration that the convicts are entitled to. The aim of the Fund is to aid the imprisoned persons released from penitentiary facilities and remand centers and their families.

⁴³ Bożena Balcerzak-Paradowska, "Polityka państwa wobec rodziny," in *Polityka społeczna w latach 1994–1996*; Stanisława Golinowska, ed., *Raport Instytutu Pracy i Spraw Socjalnych 1996*, nr 11, Warszawa: IPiSS, 1996.

cultural facilities, special schools, post primary schools, special education centers, and state health care.⁴⁴

Looking at the above-mentioned benefits and state support for a family, the social character of the family policy that has been prevailing in the latest years can be clearly seen, expressed in addressing the main solutions to families living in a difficult situation and at risk of dysfunctions.

Currently, the Polish state perceives the need to follow family policy to increase the birth rate in Polish society. The pronatalist trend is clearly exposed, for instance, by the Government Population Council in the “Assumptions for Poland’s Population Policy in 2013.” Pursuant to this study, the population policy in Poland should currently accomplish four fundamental aims: (1) create conditions favoring establishment of families, first of all, through contracting marriages and realization of procreation plans; (2) create conditions favoring integration in the aging society—reducing the scale of risk of exclusion of the elderly, dependent, and disabled people; (3) undertake actions aiming at improvement of the health condition of population and reduction of mortality rate; (4) specify the directions and principles of migration policy of Poland in times of the European integration.⁴⁵ With reference to the first of the indicated aims, it should be emphasized that the following statement was adopted as a priority specified in point I.1.2 “Promotion of gender equality and social equality and striving for ensuring conditions for free choice of allocation of roles of women and men in the family”⁴⁶ including taking up activities aimed at challenging the stereotype concerning the allocation of roles in the family.⁴⁷

⁴⁴ After Małgorzata Szyłko-Skoczny and Grażyna Firlit-Fesnak, eds., *Polityka społeczna: podręcznik akademicki* (Warszawa: Wydawnictwo Naukowe PWN, 2008), 196–97. More on the issue of family policy in Poland in 1990–2004 see Małgorzata Szyszka, *Polityka rodzinna w Polsce 1990–2004* (Lublin: KUL, 2008).

⁴⁵ More about this issue, see Rządowa Rada Ludnościowa, *Założenia polityki ludnościowej Polski 2013* (projekt), accessed May 20, 2013. http://www.stat.gov.pl/cps/rde/xbcr/bip/BIP_zalozenia_polityki_ludnosciowej_Polski_2013_projekt_luty_2013.pdf.

⁴⁶ Pursuant to guidelines concerning accomplishment of tasks specified in the Commission Communication of 3 March 2010 entitled Europe 2020: A strategy for smart, sustainable and inclusive growth [COM(2010)] 2020 a free choice of role allocation in the family is to be an element, among others, of actions towards an increase in employment rate, reduction of poverty, directed at striving for ensuring social cohesion and fight against social exclusion, but also a significant instrument in condition of aging societies and implementation of the principle of solidarity between generations. Guidelines in this matter were provided, among others, in Council Decision 2010/707/EU of 21 October 2010 on guidelines for the employment policies of the Member States [Official Journal of Laws of 24.11.2010].

⁴⁷ Rządowa Rada Ludnościowa, *Założenia polityki*.

Subject of Protection

As it can, therefore, be seen based on the example of Poland, broadly understood family issues constitute an important part of the social policy of the state, carried out on many levels. However, while analyzing the solutions adopted in the contemporary family policy of the state, the question of whether the subject of protection in the family policy of the state is really a family, and if it is a family, then what kind of a family it is.

The family policy, although *expressis verbis* refers to the family, does not define this term. The family does not occur as a subject in the legal dimension. The definition of family is one of the disputable issues in the literature, which determines the vision of the model of family. The discussion is primarily going on between supporters of the definition of a family in a narrow meaning, contrary to supporters of an extended definition. According to supporters of the narrow definition, the family is considered to be a marriage of a man and a woman, with lineal ancestors or descendants, provided that they live in a common household.⁴⁸ This model of family best corresponds to the vision of a family depicted by John Paul II in his Letter to Families *Gratissimam Sane*. On the other hand, according to supporter of an extended definition, also other social groups are considered a family, such as:

- single-parent families;
- single-generation families, for example: a childless marriage, siblings living together, etc.
- families that do not run a common household, that is, due to housing difficulties, fortuitous circumstances, separation, LAT relations (living-apart-together) or DINKS (double-income-no-kids), childless couples of separate income or homosexual relations sometimes also bringing up children);
- couples running a common household without being formally married (cohabiting) with ancestors or descendants;
- same-sex couples running a common household (for example, civil partnership, cohabitation, registered relation, homosexual marriage) with ancestors or descendants of at least one of those persons.⁴⁹

⁴⁸ See Jan Szczepański, *Elementarne pojęcia socjologii* (Warszawa: Wydawnictwo Naukowe PWN, 1963), 34; Beata Tobiasz-Adamczyk, *Wybrane elementy socjologii zdrowia i choroby* (Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego, 1998), 68; Józef Rembowski, *Rodzina w świetle psychologii* (Warszawa: WSiP, 1986), 91; Maria Ziemska, *Rodzina a osobowość* (Warszawa: Wiedza Powszechna, 1977), 28; Barbara Kałdon, "Rodzina jako instytucja społeczna w ujęciu interdyscyplinarnym," *Forum Pedagogiczne UKSW*, no. 1 (2001).

⁴⁹ See Tomasz Szlendak, *Socjologia rodziny: edukacja, historia, zróżnicowanie* (Warszawa: Wydawnictwo Naukowe PWN, 2010), 95; Adam Matusik, *Polityka rodzinna w Polsce* (Warszawa: Wyższa Szkoła Pedagogiczna TWP w Warszawie, 2013).

The above-presented Polish legislation does not solve the problem of what kind of family is the subject of the family policy of the state, since not only—as it has been already mentioned—it does not provide a legal definition of a family, but also does not constitute norms ensuring protection of a family treated comprehensively. Individual norms protect rather autonomous rights of individual persons creating a family than a family understood as a community. This thought is expressed well by Hanna Waśkiewicz, claiming that “a family does not have existence that is independent of specific persons living in this family.”⁵⁰ Andrzej Grzejdziak expressed his opinion in a similar spirit, stating that “although, undoubtedly, a family constitutes an organized social entity, legal regulations do not grant it legal status. These are family members who are the subject of legal relationships, and not the family as an organized entity.”⁵¹ The acceptance of such a solution opens the possibility that the subject of protection of the family policy of the state will be relations of persons that do not fit the definition of a family arising from the Letter to Families *Gratissimam Sane* of John Paul II.

Therefore, who, in the light of the Polish legislation, can create a family? The great majority of legal acts view a family as including: spouses, their common children, children of the other spouse, adopted children, foster children, children under (legal) care, and sometimes other children brought up and maintained if their parents have died or cannot maintain them, or have been deprived of or restricted in their parental authority. Such an interpretation direction results from regulations of the Family and the Guardianship Code, in which the notion of a family is based on the links of marriage, kinship or affinity.

But the Social Welfare Act of 24 March 2004 extends the range of persons belonging to the family, since in its light, not only related persons, but also (!) unrelated persons living in an actual relationship, living together and keeping a common household.⁵² And those who live and keep a common household together can be homosexual couples.

The amended Act of 10 June 2010 on Counteracting Domestic Violence goes even further.⁵³ Although the act does not define the term of the family, even if it uses it both in the title and in the text,⁵⁴ yet in Art. 2 par. 1 it specifies that

⁵⁰ See Hanna Waśkiewicz, “Prawa człowieka a prawa rodziny” *Chrześcijanin w świecie*, no. 139 (1985): 52.

⁵¹ Andrzej Grzejdziak, “Prawo do wychowania w rodzinie,” in *Prawa i wolności obywatelskie w Konstytucji RP*, ed. Bogusław Banaszak and Artur Preisner (Warszawa: C.H. Beck, 2002), 464.

⁵² Social Welfare Act of 24 March 2004 (consolidated text: Dz.U. 2009, no. 175, item 1362 as amended, art. 6, point 14.

⁵³ Dz.U. 2010, no. 125, item 842.

⁵⁴ Małgorzata Tomkiewicz, “Bezpieczeństwo rodziny w świetle znowelizowanych przepisów prawa polskiego — teoria i rzeczywistość,” *Studia Warmińskie*, no. 49 (2012): 271–285.

whenever the act refers to a “family member” it should be understood as a next of kin in the meaning of Art. 115 § 11 of the Penal Code, as well as any other person cohabiting or keeping a common household.

Pursuant to Art. 115 § 1 of the Penal Code, a next of kin is a spouse, an ascendant, descendant, brother or sister, relative by marriage in the same line or degree, a person being an adopted relation as well as his spouse, and also (!) a person actually living in cohabitation. Therefore, in the light of the above-referred norm of the Penal Code, a member of family can be—as according to the Social Welfare Act—a person living outside of marriage, even if cohabitation concerns persons of the same sex. In light of the linguistic interpretation directives, there are no grounds to claim that cohabitation can exist only between persons of different sexes.⁵⁵

On the other hand, while referring to the term “persons living under the same roof or keeping a common household” one must notice that this wording is highly imprecise. First of all, the use of the word “or” instead of conjunction “and” means that persons will be family members for each other also when they only live together (without keeping a common household) or when they only keep a common household without living together.⁵⁶ Undoubtedly, the intention of the legislator formulating the above-mentioned Art. 2 par. 1 was to cover by the said protection a wide circle of persons who did not fit the definition of the next of kin included in Art. 115 § 11 of the Penal Code, and who often fell victim to domestic violence, which concerned first of all divorced spouses living under one roof, or family members of live-in partners residing at the same place. However, the provision specifying that members of the family are also persons living under one room or managing a common household leads to the conclusion which is grotesque in its interpretation, namely, that a group of students living

⁵⁵ The thesis that “cohabitation” can apply also to the common life of homosexual couples, and consequently that persons remaining in this types of relationships have the status of the next in kin, can be found, e.g. in Sylwia Spurek, *Ustawa o przeciwdziałaniu przemocy w rodzinie. Komentarz* (Warszawa: Wolter Kluwer SA, 2008), 62; Jan Majewski, “Komentarz do art. 115 § 11 k.k.,” in *Kodeks karny. Część ogólna. Komentarz*. Tom I, ed. Andrzej Zoll (Kraków: Zakamycze, 2004), 1437–447; Magdalena Kulik, “Komentarz do art. 115 § 11 k.k.,” in *Kodeks karny. Komentarz praktyczny*, ed. Marek Mozgawa (Warszawa: Oficyna 2010), 232–33; Jacek Giezek, ed., “Komentarz do art. 115 § 11 k.k.,” in *Kodeks karny. Część ogólna. Komentarz* (Warszawa: Wolter Kluwer SA, 2007), 730–35; Andrzej Marek, *Kodeks karny. Komentarz* (Warszawa: Wolter Kluwer SA, 2007), 316–17; A. Michalska-Warias, “Komentarz do art. 115 § 11 k.k.,” in *Kodeks Karny. Komentarz*, ed. Tadeusz Bojarski (Warszawa: LexisNexis, 2011), 222–25.

⁵⁶ During legislative works on the Act on Counteracting Domestic Violence in its reading of 2005, representatives of the government had doubts whether it would be possible that given persons only managed a common household without living together, but these doubts did not affect the final version of the article under discussion (see Shorthand notes of the meeting of the Commission of Social Policy and Family and the Commission of Justice and Human Rights of 29 June 2005, in Archive of the works of the Sejm of the Republic of Poland of 4th term of office, www.sejm.gov.pl).

together in a rented flat should also be considered members of the family,⁵⁷ as well as those who only eat at a given family for payment.⁵⁸

Conclusion

The existing state of affairs somehow “blurs” a traditional, culturally and historically conditioned concept of a family, introducing, implicitly, its “mental redefinition.” Behind the facade of support for the family, more and more intentionally there are protected various forms of common coexistence, also including—pursuant to the gender perspective of LGBT—same-sex couples.

The current family policy is not a policy that perceives the family in a comprehensive perspective and is used for the full protection of all family life. The family, although it is a social value of established constitutional position, is not a subject for state protection and support, appropriate for this position. The existing legal norms seem to protect the interests of individual persons belonging to the family rather than the family as a whole. At the same time, the range of persons making up a family—according to a trend of extending the definition of a family—is increasingly widening.

Consequently, it should be explicitly supported that the family should be treated as an autonomous community, emphasizing at the same time that this is a unique community, based on marriage between a woman and a man, which cannot be replaced by any other interpersonal relationship. In the central point of the contemporary axiology of law—and consequently, also the family policy—protection of individual goods of any given person should be accompanied by the protection of a family as a subject of its own autonomous rights that are not only a sum of rights of individual persons creating it.

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⁵⁷ Katarzyna Dudka, “Środki zapobiegawcze stosowane wobec sprawców przemocy w rodzinie,” WPP, no. 2 (2006): 44ff.

⁵⁸ Tomkiewicz, *Bezpieczeństwo rodziny*, 278.

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Lucjan Świto

Famille en tant que sujet protégé dans la politique familiale de l'État

Résumé

Le présent article, à l'exemple de la Pologne, essaye de répondre à la question ce qui est le sujet de la politique familiale de l'État et si elle assure vraiment la protection de la famille. Les études menées conduisent à la conclusion que l'état de choses existant contribue à la « dilution » de la conception traditionnelle de la famille conditionnée culturellement et historiquement tout en introduisant d'une façon sous-entendue sa redéfinition « mentale ». En se servant du nom du soutien à la famille, on protège avec de plus en plus d'assurance différentes formes de coexistence, y inclus — conformément à l'optique genriste du mouvement LGBT — les unions homosexuelles. La politique familiale actuelle n'est pas une politique qui apercevrait la famille d'une façon globale et qui assurerait une protection complète de tous les aspects de la vie familiale. Bien que la famille soit une valeur sociale ayant une position constitutionnelle bien fondée, elle n'est pourtant pas protégée et soutenue par l'État de la façon adéquate à la position qui lui est assurée. Les normes juridiques existantes protègent plutôt les biens des personnes particulières qui y appartiennent, et non la famille comme un tout. Et en plus, le cercle de personnes constituant une famille — conformément à l'élargissement de la définition de la famille — devient de plus en plus large.

Mots clés : famille, politique familiale, protection de la famille, genre

Lucjan Świto

La famiglia come oggetto di tutela nella politica familiare statale

Sommario

Il presente articolo prova a rispondere, in base all'esempio polacco, alle domande su ciò che è oggetto di politica familiare dello Stato, e se effettivamente è necessaria una protezione della famiglia. I risultati della ricerca condotta provano che l'attuale situazione provoca una "diluizione" del concetto di famiglia, condizionata culturalmente e storicamente e porta alla sua ridefinizione "mentale". Nel nome del sostegno alla famiglia, sempre più coraggiosi sono i numerosi tentativi di coesistenza sociale, fra i quali — secondo l'ottiva gender GLBT — le relazioni monosessuali. L'attuale politica della famiglia in Polonia non è pertanto una politica che riconosce la famiglia nel suo complesso e che tutela pienamente tutti gli aspetti della vita familiare. La famiglia, nonostante il suo valore sociale sia rafforzato dalla costituzione, non è adeguatamente protetta e sostenuta dallo stato. Le attuali norme giuridiche tutelano piuttosto gli individui e non l'intera famiglia. Per questo l'insieme delle persone che rappresentano la famiglia — in accordo con la tendenza dell'ampliamento della definizione di famiglia stessa — è sempre più ampio.

Parole chiave: famiglia, politica della famiglia, tutela della famiglia *rodzina*, gender

Part Three

Reviews

Wojciech Góralski, Andrzej Pastwa,
Rodzina suwerenna — Kościół domowy
W nurcie współczesnej myśli prawnej
Kościola powszechnego i Kościoła w Polsce, 182 pp.
Katowice: Wydawnictwo
Uniwersytetu Śląskiego, 2015

A new book on marriage, by two prominent scholars—experts on marriage and the family, draws the attention of the researcher and the reader with its original and interesting title: *Sovereign Family—Home Church*. Both elements of the seemingly complex title are a logical synthesis of a phenomenon of one, indeed one, original in its kind, reality that includes the divine and human components and elements at the same time. Indulging in a careful reading, even if only looking through the chapter titles of the book, one cannot fail to notice that the authors decided to pay special attention to emphasizing those aspects of both institutions which determine their fundamental values.

The first chapter, written by Rev. Andrzej Pastwa, describes and justifies, chiefly based on theological and legal conditions, the constitutive act of marriage, which has rightly received the title of a “holy knot,” which is not only due to the source of its origin, but also owing to its anthropological value and dignity, which is inseparable from its origin. For only on this basis the well-being of the spouses, which is inspired by their mutual love—*amor coniugalis* and which gives rise to the family, can be implemented, which the author brilliantly develops and proves (pp. 18–19).

The second chapter bears an original title: “Family as a Sovereign Institution.” Its author, Rev. Wojciech Góralski, by founding his deliberations and

reflections on the study of the highest authorities, that is, on the Magisterium of the Church, and in particular, on the teachings of Pope John Paul II and Pope Benedict XVI, in an original way justifies the attribute of sovereignty of the family, which—as he emphasizes—has its origin in the natural and free act of spiritual and moral power of a man and a woman. This authority, as the author highlights, finds its expression in the act of marriage, and is further continued and completed in the premise and the objectives of the family (p. 30). This sovereignty, as the author accentuates, is characterized by a sovereignty that distinguishes it from other institutions, for instance, from the one that characterizes the state. This is because it has its foundations in the natural law, and as such is indeed necessary for the implementation of the life project, inscribed in the nature of man. As a consequence, as the author once again underlines, this sovereignty in a natural way remains ahead of the sovereignty of the nation and the state (pp. 30–33). It is worth noticing that the author confirms his thesis in an interesting way, among other things, with the help of such documents as: the Apostolic Exhortation of Pope John Paul II, *Familiaris Consortio*, which is deeply rooted in the doctrine of the Second Vatican Council, the Charter of Rights of the Family, and the Letter to Families (pp. 33–35). Embedded in the sovereignty and the autonomy of the family that is built on it, as Wojciech Góralski further justifies, is the source of a number of fundamental rights and duties, which, owing to their significance and importance, should enjoy special legal protection, care, and concern of the Church and the State (pp. 36–38).

Chapter three, entitled: “The Family—a Cradle and a School of Faith,” touches upon a substantial and vital family issue, which in the first place is fundamental for the spouses and in the second—for the offspring. The author, with his unusual intuition and comprehensive knowledge of the facts, founding his study on the documents of the Magisterium, shows and discusses a cardinal importance and impact of faith on the formation of a marriage, on its growth and development that emanates from the abiding fidelity and mutual love of married couples, which is crowned with the offspring (p. 43). Within this context, the author makes references to the well-known adhortation, *Familiaris Consortio*, where John Paul II states that “the family is the cradle and most effective means for humanizing and personalizing society” (pp. 43–44), and “through education in the faith [the human being] is introduced into the family of God, which is the Church” (p. 47). The above forms the essence of the third chapter of the present book.

The subsequent chapter four (the most extensive of all, because forty-five pages long), penned by Wojciech Góralski, bearing the title “The Family in the Resolutions of the Post-Conciliar Polish Synods,” comprises a kind of a compendium of knowledge on the current state of the family in Poland; its legal status and its present-day condition. In light of the common and particular

legislation, the author presents, the current state of the Polish family along with their problems and expectations, in the form of the Resolutions of Polish Plenary Synod (pp. 61–69), First Provincial Synod of Kraków, as well as diocesan synods (pp. 69–102). Thus, the author significantly enriches the native and world canonical literature with new solutions as regards the vista of matrimonial and family law.

Chapter five of the book, whose title Andrzej Pastwa renders a conciliar, deeply theological title of a family, namely the “Home Church”; in its original depiction, under the title: “Around the Idea of ‘Home Church,’” the author presents an image of the family, as a priceless, indispensable, and irreplaceable community of life and love, which draws its vital force from the Church that is a community of communities. That is why the family received a beautiful and a theologically justified title of “Home Church.” The author, referring to the statement by the post-conciliar Magisterium of the Church, especially to the numerous statements by John Paul II on this subject (pp. 105–111)—one can say in a masterly way shows and divinely exhibits—the human dimension of the family, which not only deserves, but also constitutes the Home Church for all members of the family. By revealing the grandeur and beauty of the family, the author did not fail to make allusions to unhealthy, unnatural phenomena, having their source in various shades of ideologies, dangerous for the family, and thus for the existence of man and the whole human community (pp. 113–115). The author, however, concludes his reflections with an optimistic note, quoting also the positive experiences and observations from the native, Polish ground of the Church in our homeland (pp. 117–118).

Chapter six, as it becomes clear from the complex meaning of its title, “The Idea of ‘Home Church,’” is a paradigm of modern identification of the rights of the family. The Polish synodal law context is conceived—as it seems—as a kind of summary of studies and analyses carried out in previous chapters of the book. A method of repetition and the relevant conclusions adopted by the authors of the book to critical analyses and conclusions herein discussed; the characteristics of the standards of the common and particular legislation concerning marriage and family, as well as finally elaborated conclusions, provides an excellent recapitulation of their creative and fruitful work in the service of the family, the Church, and the nation.

Therefore, in addition to the words of a deep appreciation for the valuable work of both authors, a sincere gratitude should be expressed for taking up this very topic that is so current at the time when ideologies concerning marriage and family, worth to be compared to myths and tales from the land of *One Thousand and One Nights*, appear in front of our eyes.

This valuable and interesting work, a testament of not only a thorough knowledge on marriage and family, but also a testament of the authors’ realistic view of the wonderful work of creation, by all means deserves special attention

of all those for whom marriage and family are the greatest gifts that were ever given to man.

Therefore, let the valuable effort undertaken by both authors, Wojciech Góralski and Andrzej Pastwa, which resulted in a new and original work, find the widest recognition and acceptance it deserves.

Józef Krzywda

Rodzina i polityka
Ed. Elżbieta Szczot, 160 pp. Lublin:
Wydawnictwo KUL, 2015

The reviewed publication is the latest study on the theme of the family which shows the influence that politics exerts on its condition, durability, rights, and dangers. The book consists of nine chapters whose authors, who come from different countries such as Mexico, Slovakia, Ukraine, and Poland, are specialists in the field of law, ethics, theology, and canon law studies.

In 2014, there was the 20th anniversary of the proclamation of the International Year of the Family by the United Nations and the Holy See. Over the last two decades, there were, and still are, many problems to confront, not only in Europe but also in North and Central America, as well as on other continents. At that time many countries had to redefine the notion of the family. Nowadays we can talk about different family models, while the very term ‘family’ is more and more often used in the plural. The institution of the family based on marriage as a heterosexual relationship between a man and a woman has been undermined. The law of many countries has made same-sex marriages possible. Moreover, there has been a significant decrease in births (e.g. in Poland and Ukraine) and a significant increase in divorces. Since the authors represent different countries, the publication has an interdisciplinary character. At the same time, the authors discuss common problems related to the family life, their sources and depict the influence of the state policy on the phenomena connected with demography and durability of the family. The publication also includes the issue of political involvement as a path to holiness which is one of the most difficult ways of achieving excellence.

In the first chapter entitled *Prawo rodzinne z perspektywy prawa naturalnego* [Family Law from the Perspective of Natural Law] Luis Mauricio Figueroa

Gutiérrez from Mexico points out that family law derives from natural law. He supports his thesis by presenting marriage as a natural institution and bases it on the teaching of Aristotle, St. Thomas Aquinas, the teaching of the Catholic Church, as well as on the provisions from the Universal Declaration of Human Rights of 1948. As demonstrated by the author, such a view on marriage is also part of anthropological perspective. In his argumentation the author refers to the understanding of the institution of marriage in the doctrine of the law. Gutiérrez points to the need to understand marriage and the family according to the anthropological foundations which refer to these institutions. At the same time, he shows that they can be found in the teaching of Jesus and in the Biblical anthropology of human love, and in the theology of the body. A considerable advantage of this chapter is the presented juxtaposition of the author's theoretical considerations with the concept of marriage and its aims in Mexican civil law as summarized by the author. He notes the evolution of legal understanding of marriage, that is, from its meaning in natural law to its utilitarian interpretation. He states that the Mexican law in force opens up a real possibility of equating relationships based on partnership with marriage. The second chapter is devoted to some presentation of natural, religious, and canonical aims of marriage.

In chapter two, *Naturalne, religijne i kanoniczne cele małżeństwa* [Natural, Religious, and Canonical Goals of Marriage], Ryszard Sztymiler from Warmińsko-Mazurski University in Olsztyn (Poland), reminds that marriage comes from God and it was God who defined its aims. Using the findings from his thirty years of research Sztymiler enumerates the responsibilities of spouses which stem from marriage. Apart from that, the author divides goals of the marriage into natural, religious, and canonical ones. The first type comprise these goals which result from their very nature, given directly by God. The religious goals are defined in the teaching of the Catholic Church, whereas the canonical goals result from the norms of canon law. By indicating the goals of marriage, bride and groom are to be more aware of the fact that the possibility of their realization affects the capability of a particular person to enter into a valid marriage. Therefore, according to the author, there is a genuine need to disseminate their true understanding. In the third chapter entitled *Posługa Kościoła katolickiego na rzecz rodziny w aktualnej sytuacji społeczno-politycznej* [The Catholic Church in the Service of the Family in Contemporary Socio-Political Condition], Jan Krajczyński from Kardynał Stefan Wyszyński University in Warsaw provides a thorough analysis of the current socio-political situation in reference to the functions that the family performs in society. The author outlines the role that the Church can play for the family as regards the realization of the task of ruling and teaching. Moreover, the author points to particular requirements for the realization of the bishops' authority and their ruling which would, in his opinion, serve the family best in new social challenges. The re-

quirements under discussion refer to the process of preparing for marriage and shaping the already existing marriages. He believes that this task should be carried out especially by pastors, catechists, and family life counselors. Their teaching should provide clear guidelines how the family can confront dangers present in contemporary times.

In the subsequent chapter, *Prawosławna nauka o rodzinie wobec współczesnych wyzwań* [The Orthodox Teaching on the Family in the Light of Contemporary Challenges], Rev. Jarosław Czereniuk from Ukraine addresses the issue of the Orthodox teaching on the family in the contemporary, secularized world. The author analyzes the creation of marriage in the mind of God and the consequences of original sin, as well as negates the theories on the creation of marriage as the aftermath of original sin committed by first parents. The author of the discussed chapter indicates that in the Orthodox theology the family is a very important image that helps to understand the Holy Trinity. At the same time, the author juxtaposes the theological view on the family with some contemporary social trends. Czereniuk emphasizes the current attempts to see the family in homosexual relationships. He analyzes homosexuality by the use of Biblical texts. Further, Czereniuk points to the unambiguously negative attitude of the Ukrainian Orthodox Church to homosexuality and he supports his own argument with the provisions of the declaration of the Church of 2013 on the negative attitude to the sin of sodomy, its social approval, and the so-called same-sex marriages. The subsequent chapter entitled *Reguły islamskiego prawa rodzinnego a globalne transformacje* [The Rules of Islamic Family Law vs. Global Transformations], written by Wiesław Bar from the John Paul II Catholic University of Lublin, discusses how, in times of global transformations, the norms of Islamic family law influence European legislation. Bar notes that laws connected with migration and civil legal cooperation are the main ways in which family law is influenced as regards its international dimension. Emphasizing the differences in the models between the Islamic and European marriage, he points to the most colliding legal rules of both cultures. As an example he uses the phenomenon of arranged marriages or the marriages forced by Islamic tradition, which in the European civilization may be regarded as a form of human trafficking. Bar also discusses the issues connected with the practice of Islamic family law, as expressed in provisions of marriage contracts, different matrimonial property regimes, and the phenomenon of sending away the wife and polygamy.

In chapter six, *The Visions and Models of the Family in the Socio-Cultural Context in Slovakia*, Helena Hrehová from the Catholic University in Trnava (Slovakia) presents the family model in Slovakia in three historical periods: the first one before the activity of St. Cyril and Methodius, the second one during the second millennium, that is, during the influences of humanism, Enlightenment, and even socialism, and the third one from the beginnings of the third

millennium. Basing her study on historical sources, Hrehová demonstrates that there are different models of social life that are contrary to the teaching of the Church, which, as the author puts it, often causes “a moral decadence and human destruction.” These phenomena negatively affect the current situation of marriage and the family in Slovakia. The concept modifications in family politics in Slovakia are the topic of the seventh chapter of the reviewed publication.

In chapter seven, Ewa Orbanova emphasizes that in the area of philosophy and the system of values today’s culture represents postmodernism. This in turn significantly influences the understanding of marriage and the family. An important aspect of this issue is human sexuality and the formation of relationships based on cohabitation. As the author observes, for Slovaks it has become a source of threat for their full understanding of the traditional family model and its protection in state law.

Chapter eight, written by Elżbieta Szczot from the John Paul II Catholic University of Lublin, is devoted to *Wyzwania dla polityki rodzinnej w Polsce* [Challenges to the Family Policy in Poland]. The author shows the meaning of the term ‘family policy’ and its place in the system of social state policy. Szczot refers to the 1980 Synod of Bishops on the family during which the Synodal Fathers drew attention to the fact that state laws’ and state institutions’ role is not to infringe the rights and affect responsibilities of the family but, rather, to support and positively defend them. As the Synod warns, families should also become more and more aware of their own role in the creation of the so-called family policy, and they should take responsibility for the social changes. The basic challenges as regards family politics are, most of all, population growth, reduction of the divorce rate, lowering the number of extramarital births, reduction of unemployment, and labor migration that negatively affects the durability of marriages and families.

The last chapter discusses some models of the family life of people who are involved in politics. In her article *Wzory życia rodzinnego osób zaangażowanych w politykę* [Patterns of Family Life of People Engaged in Politics] Lidia Fiejdasz, referring to examples of stories from saints’ lives, presents their path to holiness. As it can be observed, the right family model is of great significance, because it encourages improvement of family life and tightens the bonds between family members. It also results in their engagement in a fruitful and dedicated service for the benefit of society, realized through the influence on the state policy.

The reviewed publication can be a very inspiring reading for anyone interested in family matters. The authors observe some fears connected with dangerous models of social life present in different countries, and they point to some solutions that may prevent such tendencies. References to the teaching of the Catholic Church on the family are of the greatest significance; however, the pub-

lication also presents the reader with some sources of law of different countries, which renders the bibliography varied and extensive. It is to be hoped that the postulates that emerge from the content of this publication will be realized in the foundation of societies in the near future.

Jacek Szczot

*Filozofia polska
na tle filozofii europejskiej w XX wieku*
Ed. Maciej Woźniczka, 614 pp.
Częstochowa: Wyd. Akademii
im. Jana Długosza (JDU), 2014

The book *Filozofia polska na tle filozofii europejskiej w XX wieku* [Polish Philosophy in the Context of the Twentieth-Century European Philosophy], conscientiously edited by Maciej Woźniczka, harmonizes—one can reasonably conclude—with the research program that the Science Editor of this volume has been implementing consistently at the JDU, to which the earlier volumes edited by him convincingly attest.

In the monographic volume currently being presented to the Reader, what has become the subject of multilateral and—in majority of texts—duly detailed analyses is Polish philosophy considered against the background of the European philosophy in the 20th century, very much in line with the title of the book. This subject has been aptly recognized as an important and valid research problem. The Editor has invited a team of competent authors to cooperate, including well-known and recognized researchers into the subject area presented here, as well as some authors from the younger generation.

The structure of the volume is coherent, with parts that complement one another and the texts, compiled into consecutive chapters of this monograph of joint authorship, that are arranged content-wise.

The volume opens with a comprehensive and informative Introduction, written by Maciej Woźniczka. The Introduction presents the organizing ideas of the book thoroughly and accurately. However, it would be worth giving a title of its

own to the Introduction since it is an exceptionally original text on the part of its author, and not just an “editorial introduction” (as it is written, perhaps too modestly, in the manuscript undergoing the review).

The first part—containing a series of thematically selected texts—is titled *Związek myśli polskiej z myślą europejską* [Associations between Polish and European Thought]. It starts with a systemizing and synthetizing (though at some points decisively disputable) study titled *Wkład Polaków do myśli filozoficznej na świecie w XX wieku* [The Contribution of Poles into the World Philosophical Thought of the 20th Century] by Roman Darowski. In successive texts—characterized in the first part by the fact that they discuss the undertaken questions from quite a general perspective—further aspects of the connections between the Polish and European thought are taken into consideration: the views concerning psychology of nations (Grażyna Szumera); a philosophical discussion focused on the theory of relativity, ongoing especially in Kraków and Lviv during the period between 1905–1925, which was carefully reconstructed and provided with a competent commentary (Paweł Polak); inquiries into the philosophical inspirations of Jan Łukasiewicz, which play a key role and are also relevant for the further development of philosophy and logics (Piotr Surma); practicing philosophy in harsh exile (1940–1990) in Great Britain, which—despite the predicaments of life in exile—was intense and developed into many ideologically different currents (Artur Andrzejuk); context, method and themes when practicing the recent history of Polish philosophy by Zbigniew A. Jordan (Stefan Konstańczak); specific characteristics and intellectual qualities of Bogdan Suchodolski’s “new humanism” and its location among contemporary ideas (Andrzej Ciążela). Neatly editorially composed, the whole first part is complemented with the discussion about the “benefits of localness” and going beyond the “provincial universality” (Adam Kubiak). It should be noted that many of the authors whose texts are gathered in the first part are ranked among leading experts in the fields they have undertaken.

The second part—also including another series of thematically selected texts—depicts multiple relationships between the Polish thought and—in a broad sense—German philosophical and ethical thought. This part opens with analyses concerning the dispute over the existence of time that is carried out—or: can be reconstructed—in the inquiries of Edmund Husserl and Roman Ingarden (Wojciech Mackiewicz). Next, the philosophical creeds of Ajdukiewicz and Ingarden as Husserl’s disciples are considered and juxtaposed by Adam Olech, who explains himself that his intention behind writing the text was spurred by the centenary of the first publication of Husserl’s *Ideas, Book I*). In the subsequent text, “Edith Stein’s Philosophical and Theological Paths to the Truth” (Anna Gładkowska) have been chosen as the object of examination, the formula already adopted in the title reveals a—by far affirmative—attitude towards the undertaken subject. Inspirations for and polemics against the Phenomenology of

Life, an original concept of Anna Teresa Tymieniecka, constitute a grateful and interesting topic for reflections, introducing the essential content of the concept as well as its sources and contexts (Magdalena Mruszczyk). Juxtaposition and comparison of selected issues present in the analyses of Gottlob Frege and Lviv-Warsaw School (the problem of “Frege’s way out”) are the objective of a deftly written analytical essay (Ryszard Miszczyński). Presentation of the oeuvre of Janina Kiersnowska-Suchorzewska’s, whose intellectual activity was associated with neo-Kantianism, has been chosen as the main research objective in the text by Anna Smywińska-Pohl. An article, written by Henry Popowski, treats expertly on the topic of Polish defenders of metaphysics in connection with German philosophy. The philosophy of evil in the thought of Marian Zdziechowski inspires a wider recognition of the undertaken questions in the context of other European thinkers, as Justyna Stecko argues convincingly. In contrast, Adam Dura situates the research on conscience in the Polish 20th century moral philosophy in the context of the German philosophy of conscience, indicating and considering ongoing relationships between them. Thus, in the second part of the volume, we receive versatile and competently presented an overview of selected connections between the Polish and German philosophical and ethical thought.

The third part—containing, like the previous ones, another series of thematically selected texts—shows the manifold relationships between the Polish thought and—in a broad sense—the Anglo-Saxon and Francophone philosophical and ethical creed. The first author here (Marek Perek) presents his comments regarding similarities in the statements of Kazimierz Ajdukiewicz and Thomas Kuhn on untranslatability of scientific language. Then, Tomasz Mróz (an expert on the reception of Plato’s thought) proposes a comparative study of—often disputed—opinions expressed by Bertrand Russell, Karl Rajmund Popper, and Władysław Witwicki on communism and totalitarianism of Plato. Against the works of various Polish and European thinkers, Anna Kazimierczak-Kucharska reflects on the originality of Henryk Elzenberg’s perfectionist ethics, pointing out its unique characteristics and values, as well as its relations with the ideas and sentiments of other ethical conceptions. Further on, Michalina Kublicka enquires into Barbara Skarga’s inspiration for her concept of man, recognizing the source of this anthropological concept primarily in Barbara Skarga’s research fascination with French philosophers (especially Bergson and Lévinas). Finally, Łukasz Moniuszko scrutinizes the reception and interpretation of Chaim Perelman’s concept of justice, especially interesting from the cognitive perspective, as delivered by Zygmunt Ziemiński in his reflections on the philosophy of law and social ethics.

The fourth part focuses on the specificity of Polish philosophical culture. It opens with analyses (by Mariusz Oziębłowski) on the social context of cognitive paralysis of philosophy according to Stanisław Ignacy Witkiewicz. It is a brave and appropriate editorial decision to use a text engaged in the discussion of

such issues to introduce considerations about the specificity of Polish philosophical culture. Next, Andrzej Tarnopolski competently approaches and analyzes Władysław Biegański's predictive theory of cognition. A comparative and cross-cutting presentation depicts Stanisław Brzozowski's, Bolesław Miciński's, and Józef Tischner's "contributions to the future philosophy of man" (Bogusław Meiksner). The following two articles concern the idea and philosophical legacy of Florian Znaniecki, both still discussed by the academic community: culturalism and its reception (Sabina Prejsnar-Szatyńska), as well as the vision of heading towards the future civilization, as evidenced in the research focused on the experience of the modern city (Dorota H. Kutyla). The issues of the "Interhuman" in the philosophy of Witold Gombrowicz are discussed by Ryszard Przybylski, while the question, which has lost nothing of its relevance, namely the ethos of a scholar, is considered on the basis of an apt example of an outstanding expert in this field, that is, Stefan Amsterdamski, and presented in an article by two authors—Renata Trela and Grzegorz Trela. In turn, Anna Marek-Bieniasz directs her attention towards a significant share of Polish philosophers in the cultivation of philosophy and environmental ethics; she makes use of a good and well-known in the world example of the concept of eco-philosophy by Henryk Skolimowski. What deserves a particular interest and separate discussion are the causes of negligence in philosophical education in Poland, which has become the subject of Maciej Woźniczka's investigation. It seems appropriate that the very text ends and somehow completes the fourth part, focused on the specificity of Polish philosophical culture since it introduces the Reader to the current-day debate and leads to the continuation of this discussion.

In the fifth part of the volume, the leading questions and the transformation of the neo-Thomist thought in Poland have been presented competently. Justifiably, Magdalena Płotka pays attention to the trend in the Polish thought, which emphasizes the practical nature of philosophy; she follows the development of the concept of action in Polish philosophy (from the 15th to the 19th centuries). Michał Zembrzuski situates and considers Jan Stepa's theory of knowledge (the concept, in which epistemology is to be characterized by autonomy) against the background of European neo-Thomist philosophy. Izabella Andrzejuk tries to discern the specificity, sources and inspirations of Konstanty Michalski's philosophy of history. On the other hand, Andrzej Nowik focuses on the method of practicing the history of philosophy, which he finds in Paul Siwek's dissertations. Under the somewhat lofty title of *Nowe elementy wniesione przez Stanisława Ziemiańskiego SJ do filozofii Boga* [New Elements Introduced by Stanisław Ziemiański, S.J. to the Philosophy of God], the next article presents the views expressed by the said contemporary philosopher on Christian inspiration (Wanda Pilch). The controversial issue of "philosophy in the service of theology" is examined by Adam Filipowicz, who reconstructs didactics of philosophy in higher clergy seminars in the 20th century; it is—as this text

argues—worth a separate discussion. At the end, military ethics as considered and formulated by Józef Maria Bocheński is invoked (Dawid Pełka) by locating these principles in the context of the risks of the 20th century (and let us add: already the 21st century).

The whole volume complements the sixth part, or Annex: “Appeal to the Authors” (it is good that a text documenting the research program of the volume’s Editor has been included here, in which the invited authors were involved) and biographical notes about the authors.

The texts collected in the book should be interesting not only to historians, especially experts in Polish philosophy, but also to a large group of academic teachers and philosophy students, who aim at better familiarization with Polish philosophical culture, its uniqueness and values.

The Editor, Maciej Woźniczka, should be commended for the undertaken effort in editing this volume and for the praiseworthy consistency in his academic activity, as this volume is part of a series of monographs of joint authorship edited by him.

Thoroughly edited by Maciej Woźniczka, the volume *Filozofia polska na tle filozofii europejskiej w XX wieku* [Polish Philosophy Against the Background of the Twentieth-Century European Philosophy] ought to contribute significantly to disseminating knowledge of the Polish tradition and intellectual culture, as well as provide inspiration for further research and discussion.

Marek Rembierz

Wojciech Załuski,
Game Theory in Jurisprudence, 360 pp.
Kraków: Copernicus Center Press 2013

The Copernicus Center Press publishes numerous valuable books from different disciplines of science. Most of them are part of the research program of the Copernicus Center for Interdisciplinary Studies (the Center was founded by Rev. Prof. Michał Heller in 2008). The purpose of these research projects is to understand how a given problem (social, philosophical, economical, political, etc.) is rooted in science, related to religious, theological or ethical views, and how it originates from philosophical ideas.

The book *Game Theory in Jurisprudence* written by Wojciech Załuski fits into this program in a special way. The book is an attempt at analyzing legal and philosophical concepts through tools and methods of game theory. It needs to be emphasized that, on the one hand, game theory is a branch of rational choice theory (including decision theory and social choice theory), and on the other, it is a branch of mathematics, which studies strategic interactions. The aim of Wojciech Załuski's book is a more general analysis of concepts used in game theory without going into mathematical details.

We know that in the first half of the twentieth century some prominent mathematicians gave mathematical foundations to the “game problem.” The most significant creators of mathematical game theory were: Ernst Zermelo, Emil Borel, Hugo Steinhaus, John von Neumann, and John Nash. They constructed key mathematical concepts and structures, such as: strategy, win strategy, payoff function, dominance, equilibrium, the Minimax Theorem, cooperative game, non-cooperative game, etc. Two observations are of great significance (given, among others, by Steinhaus). Firstly, a mathematical form of procedure was

constructed, possibly after a slight modification, and applied to different cases, for example, game of chance, pursuit, chess game, and fair division. All of them are kinds of games and provide proper strategy to solve a given problem. And secondly, thanks to mathematical means, objective results are received regardless of subjective emotions and resolve of an individual: “the greed, the ignorance, and the envy of the other partners cannot deprive him of the part due to him in his estimation [...]. Even a conspiracy of all other partners with the only aim to wrong him, even against their own interests, could not damage him” (S. Banach, B. Knaster, H. Steinhaus, “The Problem of Fair Division,” *Econometrica* 16 (1948): 102).

That is why game theory can be successfully applied in many areas of both natural and social sciences. Its use is also possible in the case of law and legal philosophy, as Wojciech Załuski shows in his book. In his text we can find many legal-philosophical concepts (and even more, regarding social and ethical sciences) and their analysis through the lens of game theory.

The book consists of three parts and Appendix (360 pages in total). In the first part, we can acquaint ourselves with the foundations of game theory contained in twelve core questions and answers to them; among others, they describe different branches and functions of game theory and explain key terms of non-cooperative games (such as: *dominance*, *Nash equilibrium*, *Rollback equilibrium*, *sequential equilibrium*, *the Minimax Theorem*) and cooperative ones (such as: *the core*, *stable set*). For further consideration, a discussion of bargaining problem requires special attention and presentation of its two solutions: the Nash solution and the Kalai-Smorodinsky solution. Finally, the book describes evolutionary game theory. The author writes: “Unlike classical game theory, which makes strong assumptions regarding agents’ rationality, evolutionary game theory makes in fact no assumptions regarding agents’ rationality” (p. 74). It gives us the opportunity to assess a unique kind of rationality, for example, “rationality (and irrationality) of emotions” (Appendix).

The second part of the book discusses different cases of game theory application in describing and analyzing general issues in jurisprudence. First and foremost, the issue of the nature of law is discussed. Thanks to game theory different collective action problems are precisely described (the paradoxes of “The Prisoner’s Dilemma” and “The Chicken” are recalled) and it is explained in what way they are solved by legal norms. Further, the author analyses three important legal concepts: legal interpretation, legal regulations, and justice. Game theory can distinguish between the admissible and inadmissible meanings of a legal norm and help judges to choose the proper meaning and interpretation of this norm. I think that if we study the nature of regulations, the emergence of fundamental laws is especially important. As far as the concept of justice is concerned, we obtain clarification of the mutual advantage problem and an in-depth analysis of the controversy between utilitarian and Rawlsian justice.

The third part concerns some specific issues in jurisprudence, such as: contract law, tort law, and property law. What seems of particular interest to the author is to show an emerging concept of private property and its legal and institutional regulation on the example of the Hawk-Dove game. However, in the case of contract law the theoretical means turn out to be insufficient and the author notices that there is a need for using more advanced tools of game theory. It is a consequence of making assumptions to avoid mathematical aspects of game theory. But avoiding “mathematical aspects” of a theory, that is, *de facto* mathematical formulas, symbols, and relations causes ambiguity. On the one hand, it does not make sense to dazzle the Reader with mathematical formulas serving only as an illustration. In this case it is better to perform a logical and philosophical analysis and use the obtained results in further research. The author of *Game Theory in Jurisprudence* does directly so and it is done with due diligence. On the other hand, the use of mathematical language should not hinder the understanding of a problem, but rather clarify and illuminate it. However, before mathematization of game theory, it was impossible to see hidden analogies and to solve given problems. Still, it is to some extent possible to use only the results of mathematical analysis and obtain some positive results without using mathematical tools. The very volume being reviewed constitutes a good illustration of this thesis.

In my opinion, the author’s selection of examples of the legal theory and practice is sufficient to understand the significance of game theory in explaining different legal concepts and situations. Especially valuable is the use of evolutionary game theory to show the meaning of two terms: *evolutionary stable strategy* and *replicator dynamics*. This theory helps to account for irrational motives in the actions of individuals and can be used for explaining social and cultural evolution. It goes beyond the mechanism of reproductive success treated in biological evolution as the only payoff and it uses a different feedback mechanism. The Nash equilibrium is a kind of evolutionary stable strategy, but the latter has specific meaning. It can be used to choose one of the Nash equilibria and therefore the theory of Nash equilibrium becomes, in a sense, part of the evolutionary game theory.

I recommend the book *Game Theory in Jurisprudence* to lawyers, philosophers of science, and to all those who wish to create bridges between sciences and life, humanities, and social sciences. Thanks to the use of game theory, we can find some deeper rationality in many seemingly irrational situations.

Wiesław Wójcik

Joanna Trzópek, *Na tropach podmiotu
Między filozoficznym a empirycznym
ujęciem podmiotowości*, 386 pp.
Kraków: Wydaw.
Uniwersytetu Jagiellońskiego, 2013

The reviewed work is quite an extensive, self-contained, and interdisciplinary monograph devoted to the theme of the subject. It focuses on research into two disciplines, that is, philosophy and psychology. For this reason, the book consists of two parts. Part one is entitled “The Subject in Selected Philosophical Approaches,” and part two bears the title “The Subject in Empirical Research.” Part one consists of six chapters, while part two comprises seven. In addition, the book begins with an introduction and ends with an extensive (22 pages) summary composed of the drawn conclusions, and an outline illustrating the possibilities of the original *theory of the subject*.

In the first part there are the following chapters: (1) “At the Root of the Experience of Being the Subject; The Primeval Awareness of Self”; (2) “At the Root of the Experience of Being the Subject; Embodied Subject Being in the World”; (3) “Personal Subject”; (4) “On Subjective Determinants of Cognition and Personal World. Philosophical Subject and Science”; (5) “At the Crossroads of Philosophical Issues and Neuroscience: Psychophysical Problem, Free Will and Subjectivity”; (6) “Experimental Philosophy and Common Intuitions about Subjectivity.” The second part of the book consists of the following chapters: (1) “Neuroscience in Search of the Subject: How Do I Know That I Am the Subject?”; (2) “Neuroscience in Search of the Subject: Actions and Choices”; (3) “Neuroscience and ‘I’; From Minimal ‘I’ to Narrative ‘I’”; (4) Embodied Subject

and Science”; (5) “Daniel Wegner’s ‘Apparent Mental Control’; (6) “In the Network of Subconscious Dependencies”; (7) “Subject, Self-Regulation and Self-Determination.” The impressive bibliography includes about 420 entries.

Joanna Trzópek is an assistant professor (*doktor habilitowany*) at the Institute of Applied Psychology of the Jagiellonian University. She is therefore a psychologist, yet she undertook a demanding task of mastering difficult issues of philosophy of the subject. Her efforts proved very successful and the philosophical part of her book is an example of good and mature philosophical reasoning. The very issue of the subject is a difficult one, but the author moves freely in the areas of philosophy concerning the subject or the conscious “I,” such as the philosophy of Descartes, Kant, as well as phenomenology, existentialism, and analytic philosophy. Trzópek even makes use of the achievements of experimental philosophy, which is a relatively new philosophical discipline. The second part of her work deals with issues from the fields of neuroscience and psychology in relation to the subject, which the author specializes in, resulting in their contribution to the discipline.

The book has three basic themes, or goals. The first one aims to reconstruct and discuss approaches to the subject in philosophy in parallel with the empirical sciences (p. 15). Actually, the author indirectly refers to the nineteenth-century dispute between psychologism and philosophy (Frege, Husserl). This dispute, though apparently resolved at the time, did not result in the correct solution to the problem. The modern dispute between naturalism and anti-naturalism is an emanation of this issue, although at present supposedly (according to the author) both sides are not as sharply opposed as it was seen in the second half of the twentieth century. The second topic concerns the possible complete description of the subject and a full presentation of its unique nature in relation to all other real (actual) or abstract objects. The third objective is perhaps the most interesting and most important, because it concerns the question of whether a naturalistically described subject corresponds to a real (actual) subject at all, as naturalism (see the second goal) currently seems to be dominant in some circles.

The title of the book—which mentions traces of the subject—signifies the fact that we cannot directly examine the subject as such, but only infer on the basis of the “traces” it leaves (which is a very nice metaphor, and apparently coined by the author), in attempts to reconstruct the subject. The work employs a fundamental distinction—thus indicating one of the most important philosophical problems—between the transcendental subject, the personal subject and the empirical subject. It describes the very complicated relationships and mutual penetrations of the aforementioned types of subjects. The development of cognitive science results in a constant increase in knowledge—also philosophical one—of the human mind, and therefore, of the subject as well. This results in the possibly incomplete nature of the reviewed book, as one would expect breakthrough results of empirical research on this issue—a fact which

the author is indeed aware of. However, it seems that the methodological reflections included in the book are of universal value.

Joanna Trzópek debunks a certain superstition, popular among some philosophers in Poland, that extreme naturalism is a currently accepted view within the cognitive sciences. According to the author it does not correspond with the facts. The book ends with statements answering the question of how to naturalize the subject. They indicate the following issues that need to be solved: naturalistic reduction is not necessarily good; the problem of inclusion of *meaning (intentionality)* into considerations regarding the subject; the problem of *over-interpretation* of the research results in neuroscience and related sciences; whether the subject (consciousness) is an epiphenomenon or not; the fact that from the point of view of empirical research one cannot distinguish between incompatibilists and compatibilists.

My general opinion about the book is very positive due to its formal and substantial value. I sincerely encourage all readers interested in *the subject* to study it. Also readers interested in the methodology of cognitive science as well as philosophy based on the results of the empirical sciences will find this monograph a rewarding read.

Adam Olszewski

Roman Míčka,
Znovu jsme se ujali dědictví otců...
Konzervativní politický katolicismus v USA
na pozadí komparace Michaela Novaka
a Patricka Buchanana, 269 pp. Brno:
Centrum pro studium demokracie
a kultury, 2014

Roman Míčka's book [We Are Firmly Holding the Inheritance of Our Fathers: Conservative Political Catholicism in the U.S.A.—Michael Novak vs. Patrick Buchanan] provides the readers with an insight into the core of the debates on North American conservatism. While in the European context the conservative current of thought seems to be unified in its entirety, in the USA we have been witnessing inner differentiation, or polarization into two opposing movements called (rather schematically) paleo-conservatism and neo-conservatism. A vague consciousness about the existence of the latter current may have been aroused by the Rolling Stones' song "Sweet Neo Con," in the meantime; however, the differentiation between the two forms of conservatism has entered our public discourse. In fact, it is no longer just a matter of differentiation: "Recently, I have noticed an unprecedented 'fratricidal combat' also between our Czech conservative streams, exactly in the spirit of the joke shared apparently by American democrats: 'What is the difference between conservatives and cannibals? [...] Cannibals eat only their enemies'" (p. 10).

The author chose Patrick Buchanan and Michael Novak as typical representatives of the two different currents of thought; however, there is another major circumstance that links the two: they both share the Catholic faith. Míčka

thus finds it important to introduce the reader to the engagement of American Catholics in the public sphere and states that the number of Catholics among the members of the Congress amounts to 31 percent, so “it is more, than the proportion of Catholics in the US population” (p. 37). The author also mentions the voice of the American Catholic hierarchy, mainly the pastoral letter of the United States Conference of Catholic Bishop, “Economic Justice for All: Pastoral Letter on Catholic Social Teaching and the U.S. Economy” (1986).

Since the fall of the Soviet bloc the divisive issue has been foreign policy, especially American military involvement in the world. The neoconservatives have been supporting American interventionism in the global backing and spreading of freedom and democracy. This activist agenda, however, has been rejected by the paleo-conservatives based on their traditionalist convictions. Besides this “export of democracy,” the paleo-conservatives have been criticizing positive discrimination, multiculturalism or strengthening multinational structures, for example, the EU, UN, WTO, at the expense of national sovereignty.

The author describes the ideological maturing of both Novak and Buchanan. Novak moved from “liberal” left-wing position to conservatism (pp. 59–71), Buchanan from neo-conservatism to paleo-conservatism. Mička presents the different approaches of the two thinkers: Buchanan is skeptical about the easy application of democratic principles in those countries where there are no religious and cultural prerequisites, while Novak—as a neoconservative—expresses a relatively radical optimism in terms of the perspective of the global agreement on fundamental values as well as on the general acceptance of the democratic principles. As a Catholic, Novak sees the devastating consequences of moral relativism and consumer mentality which undermines the moral grounds of the capitalist system. Buchanan, on the other side, trusts the deeply rooted moral notions of “ordinary Americans” who have not adopted the ideals of secularism and hold the authentic conservative ideals, but have no chance to win over the liberal elites, power structures, and the demagogical role of the media. Contrary to an unconditional support for the state of Israel, Buchanan has criticized the “Jewish influence” in American foreign policy. Similarly, he was opposing the war in Iraq. Novak admits that Muslims have only weakly felt the “hunger for freedom,” nevertheless, such longing resides in “each human bosom” (p. 149). In fact, Novak even wanted to “convince the representatives of the Vatican and persistently referred to the new moral aspects of the fight, which revises the Catholic tradition of leading a just war” (p. 151). For Buchanan, however, the era of exceptional measures and extraordinary foreign policy of the USA should have been terminated with the end of the Cold War.

Regarding economic thought, Novak discloses socialism as a “residuum of the Judeo-Christian faith without religion” and as a “faith in the community, in the goodness of human race and paradise on earth” (p. 122), while the real practice of democratic capitalism is, morally speaking, more compatible with

the high ideals of Judaism and Christianity than the practice of other systems. Moreover, Novak praises the economic “wonders” in India and China which helped millions of people to break free from poverty. Buchanan also regards free market as necessary and desirable; however, he criticizes liberal international market, which is not bound with the loyalty to a specific nation or country.

Given the fact that Roman Mička has been a long-term expert on the social doctrine of the Church, he could not ignore the attitude of both of these thinkers to this doctrinal system. The difference is apparent: “Novak’s work actively interprets and even helps to form Catholic social doctrine; Buchanan either ignores it, or criticizes it in his oeuvre” (p. 179). This is due to the fact that Novak has been far more identified with the official line of the Catholic Church, has been loyal with the Church and with its hierarchical representatives. What Novak presents as a novelty or as something exceptional, has been the effort to formulate the “theology of capitalism” joined with the reflection on the engagement of the laics in the world as it was defined at Vatican II. The consequences of the Council, however, have been totally refused by Buchanan: “In the last 25 years, the Catholic Church has been entirely demystified [...] The holy sacrifice of the Mass has been replaced with a communal dinner party, celebrated in the local dialect” (pp. 186–187). The Church has been damaged by the revolutionary movement of the late 1960s, and sunk onto the level of American Protestant denominations and thwarted the moral capital built up laboriously over the preceding two centuries.

Novak attempts to overcome the “Catholic anti-capitalist tradition” and thus reproaches Popes Paul VI and John Paul II for being blind to the “economic wonders” in Europe or in East Asia, respectively. Nevertheless, he welcomes the encyclical of JP II *Centesimus annus* and its backing of the market economy, however, with fixed legal and ethical principles. Therefore, it is all the more remarkable that both thinkers with their respective points of view defend the current Pope Francis. According to Novak, the capitalism of Latin American type, which the pope criticizes, is still undeveloped and is characterized—among other things—by difficult social advancement. Buchanan praises Francis’s critique of the globalist form of current capitalism.

Roman Mička’s monograph about political Catholicism in the USA enables not only a glimpse into the ideological grounds of the thought of the two currents of conservatism, but also provides a key to interpreting the role of religion in North American society. In that sense, it also illuminates the specific form of relationship between the state and the Church in the USA.

Stanislav Příbyl

Notes on Contributors

Pavol Dancák, Professor, Ph.D., graduated from the Cyril and Methodius Roman Catholic Faculty of Theology in Bratislava in 1988, and in the same year received the priest's ordination. He worked as a parish priest and in 1996 was appointed as a censor in beatification of Bishop Paul Peter Gojdič, and later also in the process of beatification of Bishop Vasil Hopko, Th.D. In 1995, he began to study philosophy at the Philosophical Faculty of Papal Theological Academy in Cracow. In 2001, with the supervision of Professor Karol Tarnowski, he defended his doctoral dissertation *The Issue of Education in Teaching of John Paul II*. On April 27, 2005, he attained his habilitation in history of philosophy with a book *Historical and Philosophical Reflections of Paideia in Works of Karol Wojtyła*, at the Faculty of Arts, University of Prešov in Prešov, and on January 29, 2011, he was appointed Professor of History of Philosophy. On August 1, 2002, he was employed as Vice-Dean for Development and External Relations at the Greek Catholic Theological Faculty of University of Prešov in Prešov, Slovak Republic, and currently Professor Dancák is the Head of Department of Philosophy and Religion. He is a member of the Academic Council of GTF UP in Prešov and the Academic Council of the St. Elizabeth University of Health and Social Work in Bratislava.

Tomasz Galkowski C.P., Associate Professor at the Cardinal Stefan Wyszyński University in Warsaw (UKSW), graduated from the Pontifical Faculty of Theology "Bobolanum": SJ in Warsaw. In the years 1991–1995 he studied Canon Law at the Pontifical Gregorian University in Rome, where on the basis of the dissertation *Il quid ius nellà realta umana e nella Chiesa* he received his doctorate degree. He was awarded with the Bellarmin's Prize for his publication (Analecta Gregoriana 269, Roma 1996). In 2007, he received habilitation at the Faculty of Canon Law from the Cardinal Stefan Wyszyński University

in Warsaw. His monograph *Right—Duty. Priority and Interdependence in the Law Orders: Canonical and the Secular Society* earned him the Prize of the Rector of the University. He is the author of about 70 academic publications. His academic interests include issues related to the *ratio legis* of the canonical norms and issues of common law and canon law. Currently, he is a judge at the Archdiocesan Tribunal of Łódź and a Professor at Canon Law Faculty of the UKSW in Warsaw.

Aneta Gawkowska, Ph.D., is a Senior Lecturer at the Chair of Sociology and Anthropology of Custom and Law, Institute of Applied Social Sciences, University of Warsaw, where she teaches sociological theories, communitarianism, and New Feminism. She was awarded scholarships at the Institute of Human Sciences in Vienna and at the University of Notre Dame (USA). Author of the book *Taking Community Seriously? Communitarian Critiques of Liberalism* (Warszawa 2011) and *Skandal i ekstaza. Nowy Feminizm na tle koncepcji pojednania według Jana Pawła II* [Scandal and Ecstasy. New Feminism in Light of the Concept of Reconciliation According to John Paul II] (Warszawa 2015), and numerous articles; co-editor of the book *Teorie wspólnotowe a praktyka społeczna: Obywatelskość, polityka, lokalność* (Warszawa 2005). Her academic interests include: social theory, political philosophy, communitarian theories, New Feminism, and theology of the body.

Helena Hrehova, Professor, Ph.D., graduated in history and Slovak language, and literature from the P.J. Safarik University in Košice. Emigrated to Italy in 1986, where she studied philosophy and theology at the Pontifical University of St. Thomas Aquinas (Angelicum) and then 1st cycle and 3rd cycle degree programs at the Pontifical Gregorian University in Rome, where she earned a doctorate in 1995. In 1999, she obtained habilitation at the Palacky University in Olomouc, and in 2004 she was appointed a Professor of Theology by the President of the Czech Republic, Vaclav Klaus. Lecturer at the Faculty of Philosophy and Arts at the Trnava University since 1996. Head of the Department of Ethics and Moral Philosophy and the author of numerous monographs, university textbooks, chapters in monographs, and over 150 articles and studies home and abroad, for example, *Pohľad do dejin etických systemov* (1998), *Ruska ortodoxna moralna teologia v perspective “od obrazu k podobe”* (2001), *Kresťanske cnosti vo východnej spiritualite a duchovnej literature* (2002), *Etika—socialne vzťahy—spoločnosť* (2005), *Rozvažnosť a voľba podľa sv. Tomaša Akvinského* (2006), *Moralna filozofia Jacquesa Maritaina. Reflexie o etike a moralke* (2006), *Etická rozprava o cnosti a dobrokrase. Aretologicko-filokalistické reminiscencie* (2009), *Fenomen krásy v slovanskom myslení* (2011), *Etika a kultura* (2012), *Zaklady moralnej teologie v dejinnom kontexte I.* (2012), *Zaklady moralnej teologie v dejinnom kontexte II.* (2014). Permanent member of

the Accreditation Commission for the Field of Human Sciences at the Ministry of Education, Science, Research, and Sport of the Slovak Republic since 2003. Lecturer at the Faculty of Theology at the Trnava University, at the Faculty of Theology, Palacky University in Olomouc, and currently at the Masaryk University in Brno. In the center of her academic interests are: moral theology and moral philosophy, history of ethics, philosophy of Thomism and Neothomism, Russian religious philosophy, and personalism. Part of her academic school are as well ten successful Ph.D. graduates. At present, she has been leading three Ph.D. students.

Witold Kania, Ph.D., priest of the archdiocese of Katowice and an associate professor of philosophy at the Faculty of Theology, University of Silesia, Katowice, Poland. He received his doctorate in philosophy from the University of Navarra, Pamplona, Spain. He was visiting researcher at Kennedy Institute of Ethics at Georgetown University, Washington D.C. Currently he is a member of the Bioethics Committee at the School of Medicine in Katowice, Poland. His publications include several articles concerning metaethics and selected issues in applied medical ethics.

Piotr Kroczek, Professor UPJPII, priest of the Bielsko-Biala Diocese, Poland. In 2001 he obtained his MA in theology, in 2003 JCD, and in 2011 habilitation degree in legal science; Professor Extraordinarius since 2014. He lectures at the Faculty of Canon Law and at the Faculty of Social Sciences, the Pontifical University of John Paul II in Cracow. He specializes in theory of law and marriage law. His latest books are entitled: *The Art of Legislation: The Principles of Lawgiving in the Church* (2nd. rev. ed. 2012), and *Wychowanie: optyka prawa polskiego i kanonicznego [Upbringing and Education of Children from the Perspective of Polish Law and Canon Law]* (2013).

Józef Krzywda C.M., Professor, Ph.D., ordained a priest in 1969. In the years 1971–1976, he studied at the Faculty of Canon Law at the Academy of Catholic Theology in Warsaw; afterwards, he accepted the position of a Canon Law lecturer in the Higher Theological Seminary in Kraków, acting in the capacity of the principal—students' form teacher in Cracow. In 1980–1984 he worked as a lecturer in the Higher Theological Seminary in Madagascar. He returned to Poland in 1984 to continue his work in the Higher Theological Seminary in Cracow. In 1997 he began to work in the Pontifical University of John Paul II in Cracow, where he was awarded a Ph.D. and later became an Associate Professor. In 2010 he received the scientific title of the Professor of Theology. Holding the position of the Chair of the Department of Marriage Law, he dealt with the research on marriage law and the issues related to the family. He published a great number of articles, among others, in the journal *Jus Matrimoniale* (edited by

Rev. Prof. W. Góralski). Another research area is the hierarchical system of the Church. Within the scope of this field of study he published a book entitled *Prymat papieski i Kolegium Biskupów w świetle nauki Vaticanum I i II* (Kraków 2008).

Piotr Majer, priest of the Archdiocese of Cracow (Poland), an Associate Professor at the Faculty of Canon Law, Pontifical University of John Paul II in Cracow, and also currently Chancellor for the Archdiocese of Cracow. He received his S.T.L. from the Pontifical Theological Academy in Cracow in 1990, a J.C.D. degree from the University of Navarra (Spain) in 1996, and earned his habilitation in canon law from the Cardinal Stefan Wyszyński University in Warsaw (Poland) in 2010. He is a consultant on the Law Council of the Polish Episcopal Conference and the author of numerous canonical publications. In the past he served both as a judge and a defender of the bound of the Metropolitan Tribunal of Cracow.

Adam Olszewski, Professor at the Pontifical University of John Paul II in Cracow, priest in the Archdiocese of Krakow (ordained in 1983); graduated from the Faculty of Theological at the Pontifical Academy of Theology in Cracow (1983), where he received his doctor's degree (1996) and habilitation (2010) in philosophy. Since 1996 a lecturer at the Pontifical Academy of Theology, which in 2009 became the Pontifical University of Pope John Paul II in Cracow. His field of interest is logic, philosophy of logic, philosophy of mathematics, Church's Thesis. He is the author of several papers and a monograph on Church's Thesis: *Teza Churcha. Kontekst historyczno-filozoficzny* (Kraków 2009).

Andrzej Pastwa, Professor UŚ, priest in the Archdiocese of Katowice, graduated from the Faculty of Canon and Secular Law of the Catholic University of Lublin (1991), where he received his Ph.D. in Law Studies, in the field of canon law (1995), as well as his postdoctoral degree in law, in the field of canon law—marriage law (2008). Since 1992 he has been working at the Metropolitan Tribunal for the Archdiocese of Katowice, currently as a judge. Between 1999–2001 lecturer at the Higher Silesian Seminary. Since 2001 employed as a scholarly-didactic staff member at the Theological Faculty of the University of Silesia, Katowice. He is a member of Consociatio Internationalis Studio Iuris Canonici Promovendo, Consociatio Iuris Canonici Polonorum, as well as Commission for Polish-Czech and Polish-Slovak Relations of the Polish Academy of Sciences. His scholarly achievements contain, among others, monographs: *Prawne znaczenie miłości małżeńskiej* (Katowice 1999), *Istotne elementy małżeństwa. W nurcie odnowy personalistycznej* (Katowice 2007), as well as "Przymierze miłości małżeńskiej." *Jana Pawła II idea małżeństwa kanonicznego* (Katowice 2009). Currently, he is a Professor and Chair of Canon Law and Ecumenical Theology at the Faculty of Theology at the University of Silesia.

Stanislav Příbyl, Ph.D., J.C.D., is a priest of the Catholic Prague Archdiocese. He was ordained in 1996. He studied at the Law School of Charles University in Prague and the Faculty of Canon Law at the Institutum Utriusque Iuris of the Pontifical Lateran University in Rome. His thesis *Ekumenismus a právo* (Ecumenism and Law) was published in 2006. In 2011, he received the degree of docent following a successful defence of his study *Tschechisches Staatskirchenrecht nach 1989*. He is a judge of the Metropolitan Church Court in Prague; teaches church and civil law at the Theological School of South Bohemian University in České Budějovice. He also works as a researcher at the Institute of Religious Liberty Questions, the Faculty of Law in Trnava. Presently serves as a spiritual administrator of the St. Gabriel Church in Prague—Smíchov.

Marek Rembierz, Ph.D. Assistant Profesor, employed as a research and didactic worker at the University of Silesia in Katowice (since 1997), Faculty of Ethnology and Education in Cieszyn, Assistant Professor with academic habilitation. Academic promotions: 2011—habilitation in the field of religious studies at the University of Prešov in Prešov; 1999—doctoral defense, Doctor of Humanities in the field of philosophy at the University of Silesia in Katowice. Performed the following functions: 2012–2014—Chair of Comparative Pedagogy of Religion and Interreligious Dialogue in the School of Administration in Bielsko-Biała. His research interests include: philosophy, axiology and ethics; intercultural education and pedagogy of religion; social pedagogy, social work, ethics of a social worker, religion vs. social work; religious studies, ecumenical and interreligious dialogue.

Jacek Szczot, J.C.D., research and teaching employee in the Department of Administration Studies at the John Paul Catholic University of Lublin and in Wyższa Szkoła Kadr Menedżerskich in Konin. Specialist in the field of labor law, administrative law, and human resource management. Lecturer and instructor. He presented a number of papers at national and international conferences. He is the author of numerous expert reports and evaluations in law and business activity. Member of many social and business organizations in which he provides free legal and organizational aid for people in need. He is the author, co-author, and co-editor of many Polish-Ukrainian publications: *Nasz język polski—materiały pomocnicze do nauki języka polskiego*, ed. K. Kawecka, J. Szczot (Lublin 2013); *Współczesny rynek pracy wobec wyzwań XXI wieku*, ed. W. Chomicz, J. Szczot (Konin—Lublin 2013); *Gruźlica we współczesnym świecie—występowanie, objawy, leczenie*, ed. J. Walecki, J. Szczot (Lublin 2013); *Uczymy się języka ukraińskiego. Materiały pomocnicze do nauki języka ukraińskiego*, ed. N. Ciołek, J. Szczot (Lublin 2014), as well as Polish publications: *Audyt wewnętrzny w jednostkach sektora finansów publicznych*, ed. (Lublin 2012); *Standardy etyczne praktyki audytu wewnętrznego*, co-ed. (Lu-

blin 2013); *Równy dostęp do zatrudnienia w administracji publicznej* (Lublin 2014). In 1997–2001 a Member of Parliament in the Third Term Sejm; i.a. member of the Parliament Social Policy Committee. He was Deputy Minister twice. In 2000–2001 Secretary of State in Ministry of Regional Development and Construction. Since 2007 Undersecretary of State in Ministry of Regional Development. Since 2002 an expert in Sejm Committees working on changes in Labor Code, among others.

Lucjan Świto, Professor UWM, priest in the Archdiocese of Warmia, graduated from the “Hosianum” Seminary in Olsztyn and the Faculty of Canon Law at the Cardinal Stefan Wyszyński University in Warsaw. He also studied at the Faculty of Canon Law of the Gregorian University in Rome, as well as at the Congregation for Divine Worship and the Discipline of the Sacraments and at the Apostolic Tribunal of the Roman Rota in Rome. He earned his doctorate, followed by habilitation, at the Faculty of Canon Law at the Cardinal Stefan Wyszyński University in Warsaw. Currently, he is a judicial vicar at the Metropolitan Court of the Archdiocese of Warmia, as well as the Head of the Department of Canon Law at the Faculty of Theology of the University of Warmia and Mazury in Olsztyn.

Yosyp Veresh, Rev. Dr., STD, is a Byzantine Catholic priest of the Greek-Catholic Eparchy of Mukachevo (Ukraine). He studied philosophy and theology in Ukraine at the Blessed Theodore Romzha Greek-Catholic Academy in Uzhgorod, (1992–1995), in Austria at the International Theological Institute in Gaming, with a resurge program in Oxford, where he obtained his M.T.S., S.T.L., and D.T.S. degrees (1995–2004), and in Poland at the Pontifical University of John Paul II in Cracow, where he obtained his S.T.D. (2008–2010). In 1999–2003 he taught and served as vice-rector and rector at the Blessed Theodore Romzha Greek-Catholic Academy, Uzhgorod (Ukraine). Since 2005 he taught theology at the International Theological Institute (ITI) in Gaming, Trumau (Austria) where in 2010–2015 he was a lecturer in patrology and Eastern Christian studies and a Director of the Centre of Eastern Christian Studies. In 2010–2015 he was also coordinating the program Licentiate in Sacred Theology with concentration on Eastern Christian theology at the same Institute. He has published on the theology of marriage, anthropology, and spirituality in the Christian East. His research and teaching interests are: patristic theology and anthropology, Christian marriage and family, ascetical and mystical theology in the Christian East. At present, Rev. Veresh serves as academic and spiritual Director of the Language and Catechetical Institute Mission Outreach Program in Gaming (Austria), and is a Visiting Professor at the Faculty of Theology at the Ukrainian Catholic University in Lviv (Ukraine).

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