

THE SPECIAL LEGAL STATUS AND SOCIAL POSITION OF MARRIAGE AND FAMILY IN VIEW OF THEIR DUTIES AND GOALS

SZCZEGÓLNY STATUS PRAWNY ORAZ WYJĄTKOWA POZYCJA SPOŁECZNA MAŁŻEŃSTWA I RODZINY Z PUNKTU WIDZENIA ICH ZADAŃ I CELÓW

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Abstract

The fundamental premise and purpose of the subject so framed is to demonstrate the special status and unique social position of both marriage and family, especially in the Church, state, and nation. Their distinct social position stems from their nature and vocation, the latter being manifested in their rights and duties intended to help achieve their goals. Another specific bond that binds them (marriage and family) together is the actual desire to establish a family on the foundation of a legally contracted marriage.

Keywords: marriage, family, Church, state, legal status, social position

Abstrakt

Zasadniczym założeniem i celem tak sformułowanego tematu, jest próba wykazania szczególnego statusu oraz wyjątkowej pozycji społecznej: tak małżeństwa jak i rodziny; zwłaszcza w Kościele, w Państwie i narodzie. Ich zaś szczególna pozycja społeczna ma swoje źródło w ich naturze oraz w powołaniu, które swoiście wyrażają właściwe im prawa i obowiązki, mające prowadzić do realizacji ich celów. Innym szczególnym spoiwem, jaki je łączy (małżeństwo i rodzinę) między sobą, jest realny postulat budowy rodziny, na legalnie zawartym małżeństwie.

Słowa kluczowe: małżeństwo, rodzina, Kościół, Państwo, status prawny, pozycja społeczna

Introduction

The institution of marriage and the ensuing phenomenon of the family¹ are strictly, or even “genetically,” related realities.

This close link stems from and is rooted in the divine act of creation of the first people, as the inspired author solemnly put, “So God created man in his own image, in the image of God he created him; male and female he created them” (Genesis 1:27).²

When creating man “[...] in his own image,” in the image of the Holy Trinity, God created him as a family, saying, “Be fruitful and multiply and fill the earth and subdue it [...]” (Genesis 1:28). This instruction given to the first parents was to evolve prospectively into a special sign, the sign of “[...] the sacrament of Matrimony, whereby they signify and partake of the mystery of that unity and fruitful love which exists between Christ and His Church” (cf. Ephesians 5:32). This is how, according to the revealed truth on the creation of the first people and the subsequent establishment of the Church by Christ, a close bond was established between marriage and the Church or, in other words, a special bond between marriage and the family in the Church. God also inspired them (marriage and family) to pursue special vocations, mainly manifested in their rights and duties occurring within the domains of: Church, nation and state, in which they can grow and achieve their assumed goals.

Having this in mind, relevant methods and forms should be designed for the performance of their respective tasks, which require the three institutions to exercise care and diligence to enable marriage and the family to do so.

The choice of the topic is attributed to the mounting challenges and crises that affect many marriages and families, and, moreover, by “various demands” to claim the place filled by marriage and the family today.

¹ Sacrosanctum Concilium Oecumenicum Vaticanum II, *Constitutio dogmatica de Ecclesia Lumen gentium* (21.11.1964), AAS 57 (1965), p. 5-71 [hereinafter: LG], no. 11b.

² *Catechismus Catholicae Ecclesiae*, Libreria Editrice Vaticana, Città del Vaticano 1997 [hereinafter: CCE], no. 1602. See Styczeń 1981, 19-28; Ratzinger 2017, 507-26.

1. The natural-law dimension of the institution of marriage and of the family

Before all else, it should be noted that marriage and the family enjoy, when compared with other institutions and communities, a different nature that by far distinguishes them in the life of the Church and nation. This nature, as noted elsewhere, is defined and determined by their unique and important duties and goals. Through them, they enrich themselves, in their existence and work, thus enriching other communities and institutions that integrate with them. At this point, it is worth recalling the (still debated) problem of whether the set of rights and duties inherent in marriage and the family stems from social evolution, or rather, as others assume, it is based on the very nature of the two. Does this nature, in ontological terms, underlie such and not any other legitimate rights and duties?

Some interesting observations and reflections on this subject were made by R. Gerardi. When referring to the first book of the *Digests* (by Emperor Justinian), under the title *de iustitia et iure*, after the definition of *ius naturale*, he included Ulpian's definition (a well-known Roman jurist) who ranks marriage among the institutions of natural law [Gerardi 2007, 217].³ Modestinus, another Roman jurist, shared a similar view [Dębiński 2003, 181].⁴

Speaking of contemporary thinkers, Cardinal Z. Grocholewski's views are worth considering. This is what he wrote when referring to the natural-law dimension of marriage, "the natural truth about marriage, [which] was confirmed by Revelation and is contained in the biblical stories about creation, is also an expression of the original wisdom of man, in which the voice of nature itself reverberates" [Grocholewski 2009, 41].⁵ The same

³ "Ius naturale est, quod natura omnia animalia docuit: nam ius istud non humani generis proprium, sed omnium animalium, quae in terra, quae in mari nascuntur, avium quoque commune est. Hinc descendit maris atque reminae coniunctio, quam nos matrimonium appellamus, hinc liberorum procreatio, hinc educatio" [Gerardi 2007, 217].

⁴ "Nuptiae sunt coniunctio maris et feminae et consortium omnis vitae, divini et humani iuris communicato" (Modestinus, D. 23, 2, 1).

⁵ A few lines below, under the title, *The Church Respects Natural Law*, the author added, "What has been said above is only an example of the affirmation of natural truth, whose perception in present-day's mentality can be completely lost by rejecting natural law." And

issue was also commented on by Cardinal J. Ratzinger, while still Prefect of the Congregation for the Doctrine of the Faith, “The nature of marriage is its historical character; it only occurs in the historical order [...]” [Ratzinger 2017, 529].

Speaking of Grocholewski’s position, he certainly deepened and broadened the views of the mentioned ancient jurists and Cardinal Ratzinger.

Given the context of the subject matter, it seems more advisable to refer to the view of the outstanding contemporary sociologist of law, F. Adamski, who argues that the relationship between a man and a woman, which goes far beyond the personal and private domain, is always public and subject to the laws and customs of the community. He further notes that human bonds known as marriages are always and everywhere distinguished from other forms of coexistence [Adamski 1987, 7].⁶ Undoubtedly, the latter statement is particularly relevant due to, as pointed out in the opening part of this paper, various proposals that aspire to eliminate or, at least, attempt to replace the institution of marriage and family in the social life of the Church and nations.⁷

2. Marriage of the baptized: the sacrament that makes and builds the Christian family

The first and most fundamental moment that determines the sacred nature of matrimony is God’s creative act whereby a male and a female are called into existence “in the image of God” (Genesis 1:26-27; CCE 1601).

This divine act of creation, however, acquires a new meaning and power because, by becoming a covenant with created people, it becomes a “marriage covenant” made by his will (Genesis 1:27). This covenant “[...] raised

he goes on to say, “The Church must never cease to be committed to defending this truth, not because it is a confessional truth, but because it is a truth that belongs to the universal right reasoning (*recta ratio*)” [Grocholewski 2009, 41].

⁶ See also: Adamski 1984, 66-122; Tosato 1976.

⁷ Sacrosanctum Concilium Oecumenicum Vaticanum II, Constitutio pastoralis de Ecclesia in mundo huius temporis *Gaudium et spes* (07.12.1965), AAS 58 (1966), p. 1025-115 [hereinafter: GS], no. 47; Ioannes Paulus PP. II, Adhortatio apostolica *Familiaris consortio* de familiae christianae muneribus in mundo huius temporis (22.11.1981), AAS 74 (1982), p. 81-191, no. 6.

by Christ the Lord to the dignity of a sacrament”⁸ empowers “[...] Christian spouses, in virtue of the sacrament of Matrimony, whereby they signify and partake of the mystery of that unity and fruitful love which exists between Christ and His Church” (cf. Ephesians 5:32) to assist each other “to attain to holiness in their married life and in the rearing and education of their children. By reason of their state and rank in life they have their own special gift among the people of God (cf. 1 Corinthians 7:7)” (LG 11).

Delving deeper into the meaning of the sacramental sign of the matrimonial covenant, this divine sacramental act makes the consent of two persons *consensus matrimonialis* of a man and a woman, who lawfully express their will to marry, acquire a new power. This power is manifested in the sacred bond that causes the spouses to enter the new state with specific rights and duties (Mark 10:9; Canon 1057 CIC/83).⁹ Consequently, this sacramental seal creates the continuity of the bond that exists between the first matrimonial covenant and the sacramental sign instituted by Christ, thus including the matrimonial covenant, as mentioned above, in God’s covenant with the Church (GS 48; CCE 1639). This bond, marked by God’s fidelity to mankind, requires the spouses to be mutually faithful in order to cherish fidelity to God. Hence, J. Ratzinger’s words, “It goes without saying that the properly understood *sacramentum* of Christian marriage determines its unity and indissolubility: As the embodiment of fidelity to God’s covenant in fidelity to human covenant, Christian marriage expresses the finality and irrevocability of God’s ‘yes’ in the finality of the irrevocability of the human ‘yes’ [Ratzinger 2017, 529]. This important and fundamental statement by J. Ratzinger closes his deep theological justification of the

⁸ “Christ the Lord abundantly blessed this many-faceted love, welling up as it does from the fountain of divine love and structured as it is on the model of His union with His Church. For as God of old made Himself present to His people through a covenant of love and fidelity, so now the Saviour of men and the Spouse of the Church comes into the lives of married Christians through the sacrament of matrimony” (GS 48b). See: *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1-317 [hereinafter: CIC/83], Canon 1055 § 2.

⁹ “From a valid marriage there arises between the spouses a bond which of its own nature is permanent and exclusive. Moreover, in Christian marriage the spouses are by a special sacrament strengthened and, as it were, consecrated for the duties and the dignity of their state” (CCE 1638). See Canon 1134 CIC/83.

importance of the requirement of fidelity being expressed in the attributes of unity and indissolubility, which are integrally linked to fidelity. “Only this is truly in line with faith as the ultimate criterion and is therefore the realization of the truly Christian ethos” [ibid.]. “The possibility of irrevocable decisions initiated by faith,” says Ratzinger, “is one of the central elements of the image of mankind (made in the image and likeness of God, to be precise) that faith implies” [ibid.]. And to exclude any allusions to different suppositions, he adds, “At the same time, of course, it must be firmly stressed that the unity and indissolubility of marriage do not derive from natural law” [ibid.]. Although the above discussion on matrimony does not explicitly imply that every marriage leads to the establishment of a family, the entire theological doctrine on the nature of marriage and the accompanying knowledge implicitly communicate that a specific marriage is capable of springing the family (GS 48).¹⁰

Before continuing the discussion in the following section, it is worth recalling an interesting opinion of the outstanding theologian of law, E. Corecco. He made a serious attempt to demonstrate the relationship between the family and the Church and *vice versa*. He observed, among other things, that the science of canon law, being more preoccupied with matrimony at its *in fieri* state than in the *in fact esse* sphere was not able to define precisely enough the constitutional dimension of the Christian family as defined by the Second Vatican Council, i.e. *velut Ecclesia domestica* – a domestic Church [Corecco 1990, 188].¹¹

3. The legal status of marriage and family in relation to other institutions and communities

At this point, an attempt can be made to perform a more comprehensive assessment of the status of marriage compared with other institutions and communities, in particular, with the Church, and it has already been done above, but especially with the state and the nation. For them and in

¹⁰ “By its very nature the institution of marriage and married love is ordered to the procreation and education of the offspring and it is in them that it finds its crowning glory” (CCE 1652). See Canon 1055 CIC/83.

¹¹ This thesis seems to require greater justification. Perhaps, it will garner interest of, especially, the theologians of law, E. Corecco being their eminent representative.

them, marriage and the family enjoy the exceptional and privileged status, or, at least, they should.

It is therefore appropriate, due to the special relationship between the Church and marriage, to stress the place and role of matrimony in the Church first.

Relying on tradition, the Second Vatican Council referred to the family as “the domestic Church” – *Ecclesia domestica* (LG 11; FC 21; CCE 1656), which is reiterated in the CCE, “Christ chose to be born and grow up in the bosom of the holy family of Joseph and Mary” (CCE 1655).

Therefore, keeping in mind that Christ came into the world and grew up in the bosom of the holy family, and that the Second Vatican Council named the family “the domestic church,” it is more than legitimate to say, as many authors so, that the family belongs to the constitution of the Church.¹² And this statement, as E. Corecco put it quoted above, leads to yet another important conclusion that the family is the environment through which the Church realizes herself [Corecco 1990, 189-90]. The thesis is probably not new, after all its **father and promoter** [highlighted by J.K.] is St Paul, who teaches, “Husbands, love your wives, just as Christ loved the Church... This is a profound mystery, but I am talking about Christ and the church” (Ephesians 25:32; CCE 1659).¹³

Since, as mentioned elsewhere, the nation and the state, as provided in the constitutions of many countries, are intrinsically bound to marriage and the family, as their fate largely depends on them, it is justified to say that marriage and the family are also instrumental in the origin and existence of the state. That said, it is expected, and even required, that marriage and the family be constitutionally protected and guaranteed multiple forms of assistance, and, if need be, proper defence.¹⁴ For example, such

¹² International Theological Commission, *Doktryna katolicka o sakramencie małżeństwa* (1977), in: *Od wiary do teologii. Dokumenty Międzynarodowej Komisji Teologicznej 1969-1996*, edited by J. Królikowski, Wydawnictwo Księży Sercanów, Kraków 2000, p. 89-110, no. 8-11. “En fait la famille, en tant que telle, appartient à la constitution de L’Église à titre essentiel, puisqu’il s’agit du lieu par lequel l’Église se réalise en tant que résultat spécifique de l’amour sponsal du Christ pour toute l’humanité moyennant l’efficacité propre du sacrement” [Corecco, 1990, 188]. See also: Gerosa 1999, 268-69.

¹³ See Corecco 1990, 188-93. This idea still awaits further deepening and elaboration.

¹⁴ “Public authority should regard it as a sacred duty to recognize, protect and promote their

protection of marriage and the family is guaranteed by the Constitution of the Republic of Poland.¹⁵ Next to the Polish Constitution, the legislator also established guarantees in lower-tier legislation by drawing up the Family and Guardianship Code.¹⁶

Conclusion

Having followed and analysed the relevant legislation and opinions voiced by the authors named in this paper on the subject matter discussed herein, new and interesting observations can be made and conclusions drawn.

The first pertinent conclusion is that marriage and the family that springs from it should be a permanent standard. In other words, especially the Church and the state, as underlined elsewhere, should act in concert and in full agreement and harmony in areas that pertain to the values, dignity, and vocation of marriage and the family.

Second, both the legislator and the entire activity of public institutions and other factors should endeavour to ensure that every family is rested on a legally contracted marriage.

Third, it is necessary to create decent and favourable conditions for families and youth in the Church and the nation, so that they can properly fulfil their own vocation and responsibly prepare to enter that specific social state in accordance with their spiritual and moral qualities and virtues.

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authentic nature, to shield public morality and to favour the prosperity of home life. The right of parents to beget and educate their children in the bosom of the family must be safeguarded. Children too who unhappily lack the blessing of a family should be protected by prudent legislation and various undertakings and assisted by the help they need" (GS 52).

¹⁵ Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended, Article 18.

¹⁶ Act of 25 February 1964 – The Family and Guardianship Code, Journal of Laws No. 9, item 59 as amended.

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