

PARENTHOOD AS THE NATURAL AND SOCIO-LEGAL TITLE TO RAISE OFFSPRING IN ACCORDANCE WITH THE NORM OF CANON 1136 OF THE 1983 CODE OF CANON LAW

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Abstract

The article offers a description and characterization of the special right of parents to raise their offspring on two counts: from the act of becoming a parent and from the fact that arises from the relationship and bond of the parents and their offspring with society. This relationship exists in particular with the Church and the State, for which the family is a fundamental social component. Consequently, both institutions have a vital interest in educating the offspring, with the institutions of foster family and adoption playing a special role.

Keywords: parenthood, education, Church, State, foster family, adoption

Introduction

When we undertake to reflect on the essential parental duties and rights with respect to their children, which the ecclesiastical legislator codified in the 1983 Code of Canon Law,¹ it is necessary first to highlight those features and aspects of them that are grounded in natural law, the fact of which we are reminded by the Catechism of the Catholic Church.²

¹ *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1-317; English text available at: https://www.vatican.va/archive/cod-iuris-canonici/cic_index_en.html [henceforth: CIC/83]; legal state as of 18 May 2022, Canon 1136.

² *Catechismus Catholicae Ecclesiae*, Libreria Editrice Vaticana, Città del Vaticano 1997; English text available at: https://www.vatican.va/archive/ENG0015/_INDEX.HTM, no. 1901:

Inspired by the teaching of the Second Vatican Council, these requirements gained special recognition from the legislator, who states: “Parents have the most grave duty and the primary right [*officium gravissimum et ius primum*] to take care as best they can for the physical, social, cultural, moral, and religious education of their offspring” (Canon 1136). It follows that the legislator considered their mission to be primary to others, recognising its importance and the unique role of parents, in matters of raising offspring, sanctioning their parental – natural status, which is also recalled by the Charter of the Rights of the Family.³ However, the following should be noted: if the expression *officium gravissimum* fully captures this uniqueness of parental rights and duties, the expression *ius primum*, apparently, does not fully reflect the meaning of the legislator’s intent, as it does not imply this special and unique vocation and mission of parents, vested in them by virtue of giving birth to offspring, which John Paul II highlights in the apostolic exhortation *Familiaris consortio*.⁴

1. Parenthood as a title of special priority in the education of offspring

In our consideration of the issue of raising and educating offspring, the point of departure will be Part II of the constitution *Gaudium et spes*,⁵ bearing the significant title “Some problems of special urgency”,

“If authority belongs to the order established by God, ‘the choice of the political regime and the appointment of rulers are left to the free decision of the citizens’ [GS 74 sent. 3]. The diversity of political regimes is morally acceptable, provided they serve the legitimate good of the communities that adopt them. Regimes whose nature is contrary to the natural law, to the public order, and to the fundamental rights of persons cannot achieve the common good of the nations on which they have been imposed.”

³ Pontifical Council for the Family, *Charter of the Rights of the Family* (22.10.1983); English text available at: https://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_19831022_family-rights_en.html.

⁴ John Paul II, Adhortatio apostolica *Familiaris consortio* de familiae christianae muneribus in mundo huius temporis (22.11.1981), AAS 74 (1982), p. 81-191; English text available at: https://www.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_19811122_familiaris-consortio.html [henceforth: FC], no. 39.

⁵ Vatican II, Constitutio pastoralis de Ecclesia in mundo huius temporis *Gaudium et spes* (7.12.1965), AAS 58 (1966), p. 1025-115; English text available at: https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html, no. 52.

in conjunction with the indications of *Familiaris consortio*. In this connection, it is worth recalling Cardinal Karol Wojtyła speaking at the Second Vatican Council on the issue of parental education: “Spouses know that in fulfilling the duty of transmitting life and educating offspring, a duty that must be considered their primary mission, they are collaborators with God the Creator and, as it were, its exponents” [Wojtyła 2003, 255; my translation]. This excerpt highlights a profound theological truth about the special and unique dignity of the mission of parents in the work of raising and educating their own children.

In the same vein, we should underscore the fact that, for both parents and born human beings, the act of giving birth to offspring is a momentous event that gives the legal spouses the title of parents by God’s will. It is the kind of nomination that, strictly speaking, cannot be alienated, and it obligates them to raise and educate their children. The Second Vatican Council prescribes: “Since parents have given children their life, they are bound by the most serious obligation to educate their offspring and therefore must be recognized as the primary and principal educators.”⁶ Recognising the need to constantly raise parents’ awareness of their educational responsibilities, John Paul II devoted his *Letter to Families* to this issue, in which he asked the following question to underscore the importance of parental education: What is involved in raising children?⁷ “In answering this question two fundamental truths should be kept in mind: first, that man is called to live in truth and love; and second, that everyone finds fulfilment through the sincere gift of self. This is true both for the educator and for the one being educated” (Letter 16). Then, elaborating on the essence of the parental education, he said: “From this point of view, *raising children can be considered a genuine apostolate*. [...] [It] not only creates a profound relationship between the educator and the one being educated, but also makes them both sharers in truth and love, that

⁶ Vatican II, *Declaratio de educatione christiana Gravissimum educationis* (28.10.1965), AAS 58 (1966), p. 728-39; English text available at: https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651028_gravissimum-educationis_en.html [henceforth: GE], no. 3

⁷ John Paul II, *Litterae Gratissimam sane familiis datae ipso volente sacro Familiae anno MCMXCIV* (02.02.1994), AAS 86 (1994), p. 868-925; English text available at: https://www.vatican.va/content/john-paul-ii/en/letters/1994/documents/hf_jp-ii_let_02021994_families.html [henceforth: Letter].

final goal to which everyone is called by God the Father, Son and Holy Spirit. [...] *Parents are the first and most important educators* of their own children, and they also possess a *fundamental competence* in this area: they are *educators because they are parents*” (Letter 16). Regarding the indications of *Gravissimum educationis*, he explained: “They share their educational mission with other individuals or institutions, such as the Church and the State. But the mission of education must always be carried out in accordance with a proper application of the *principle of subsidiarity*. [...] Parents by themselves are not capable of satisfying every requirement of the whole process of raising children, especially in matters concerning their schooling and the entire gamut of socialization” (Letter 16), so John Paul II concluded these statements thus: “all other participants in the process of education are only able to carry out their responsibilities *in the name of the parents, with their consent* and, to a certain degree, *with their authorization*” (Letter 16).

From our analysis of the issue of education of children for life in the family and society – regardless of who acts as the educator, parent or, for example, legal custodian – it follows that a kind of “canon” should be adopted and implemented, addressing essential, permanent values and principles, which the education of children should adhere to. Focusing on the dignity and uniqueness of each human person, this education concerns both the educators and the educated. In conclusion, it must be said that spouses who are parents “have an equal duty and right to those things which belong to the partnership of conjugal life” (Canon 1135). When they become parents, they “must trustingly and courageously train their children in the essential values of human life [...] being fully convinced that ‘man is more precious for what he is than for what he has.’ [GS 35]” (FC 37). Children, on the other hand, while under their authority, undergo education until they reach the age of majority, when they can actively participate in social, cultural, moral and religious life. Since the principles and requirements mentioned by the legislator converge in the entire process of parental education, parents must be guaranteed adequate preparation so that they can truly fulfil their responsibilities towards their children [Pawluk 1996, 212-15].

2. Special duties, rights and tasks of the Church and the State in the work of educating offspring

As taught by the Church, “the family is the primary but not the only and exclusive educating community” (FC 40). So John Paul II justifies and explains: “Man’s community aspect itself – both civil and ecclesial – demands and leads to a broader and more articulated activity resulting from well-ordered collaboration between the various agents of education” (FC 40) [Sitarz 2017, 78-80], which is why the following was added: “All these agents are necessary, even though each can and should play its part in accordance with the special competence and contribution proper to itself” (FC 40).

The ecclesiastical and civil legislators, as history shows, by making an important contribution to the building up and development of marriage and the family – first of all by enacting appropriate laws, and then by providing adequate means (which is an important, constitutive contribution, when it comes to matters of education) – plays, so to speak, a complementary role. In this fundamental area, *Gravissimum educationis* teaches: “In addition, therefore, to the rights of parents and others to whom the parents entrust a share in the work of education, certain rights and duties belong indeed to civil society, whose role is to direct what is required for the common temporal good. Its function is to promote the education of youth in many ways, namely: to protect the duties and rights of parents and others who share in education and to give them aid; according to the principle of subsidiarity, when the endeavours of parents and other societies are lacking, to carry out the work of education in accordance with the wishes of the parents; and, moreover, as the common good demands, to build schools and institutions. Finally, in a special way, the duty of educating belongs to the Church, not merely because she must be recognized as a human society capable of educating, but especially because she has the responsibility of announcing the way of salvation to all men, of communicating the life of Christ to those who believe, and, in her unflinching solicitude, of assisting men to be able to come to the fullness of this life” (GE 3).

Keeping constantly in mind that parents are the first educators of their children, it should be recognised, first and foremost, that in accordance with natural law no legal power has no right (except in special cases) to deprive them of their parental rights and duties. It is therefore obvious that

all that has been said, in principle, in the matter of parental education applies *mutatis mutandis* also to persons and institutions that provide care – in whole or in part – in the field of education (Canon 793 § 1) [Pawluk 1996, 215]. This particular issue of taking over the education – if the parents (or the parent) are unable to raise the offspring – was given special emphasis by John Paul II: “The family is thus, as the Synod Fathers recalled, the place of origin and the most effective means for humanizing and personalizing society: it makes an original contribution in depth to building up the world, by making possible a life that is properly speaking human [...]. In the family ‘the various generations come together and help one another to grow wiser and to harmonize personal rights with the other requirements of social living.’ [GS 52]” (FC 43).

3. Foster families and the institution of adoption

When considering the issue of foster families and the institution of adoption from our perspective, we should note that the ecclesiastical legislator does not establish its own separate regulations in this regard, but adopts the principles and norms of civil laws, with the proviso that the principles of divine natural law is observed.

John Paul II’s call to the family, “Family, become what you are” (FC 17), has a great deal of relevance in our time, especially when alarming tendencies appear to appropriate the place and role of the family in the life of the Church and the nation.

When we address foster family issues and the institution of adoption, we must expect – if not firmly demand – that John Paul II’s appeal to the family be also applied to individuals and institutions that assume educational roles of parents. After all, one speaks of the condition, circumstances and abilities of the foster family or adopters that meet the criteria of a natural family as best as possible. This raises the following questions. Do the current provisions on foster care of the Polish Family and Guardianship Code⁸ (Article 112) correspond to the provision of Article 87 thereof? It is worth noting that in the literature, when talking about the foster

⁸ Act of 25 February 1964 – The Family and Guardianship Code, Journal of Laws No. 2020, item 1359, as amended [henceforth: FGC].

family, we encounter “strict”⁹ and “broad”¹⁰ definitions of it [Banach 2017, 107-108]. It is also important that a child who is placed in the educational care of a foster family find due and proper care, characteristic of the natural family, which is happily facilitated by the norm of the current FGC.

A similar role played by the foster family with respect to education is also fulfilled by the institution of adoption, already known in Roman law. Adoption, being fundamental for the good of society at large – and, above all, the family as such – also has an important pro-social role to play in modern times. The FGC contains relevant provisions in this regard in Chapter II titled “Adoption”, defining the relevant criteria, various forms and conditions of the act of adoption, taking into account the diversity of circumstances and needs of adopters and adoptees in our time. As it seems, the crucial motive for adoption is, as defined and stipulated by the FGC, the welfare of the adopted minor (Article 114 § 1), subject to the proviso contained in § 2: “The minority requirement must be satisfied on the day of submitting an application for adoption.” The act of adoption, giving rise to a legal relationship between the adopter and adoptee, arises only from the will of the persons involved; not as a natural consequence of the legal effects of parenthood [Kasprzyk 2012, 798-99].

Conclusion

In this article, we have tried to highlight parents’ principal right (*ius primarium*) to raise their children, which also gives rise to obligations – it is also their most serious duty in life (*officium gravissimum*). This right with regard to offspring – as the formula of the norm dictates – is of special nature and significance. This was explicitly stated and highlighted, for the first time, by the ecclesiastical legislator in Canon 226 § 2. Considering that the family and the offspring it produces is a cornerstone of the nation, the Church and the State, the three have a vital interest in educating children. For this, they commit – each according to its nature, character and mission – to participate in the work of educating children.

⁹ In the strict sense, foster family means the care of individuals (foster parents), or even one such person, intended to raise a child until adulthood, on the basis of an agreement with the biological parents or often a contract concluded for a decision of public authority.

¹⁰ In a broad sense, foster family means any form of foster care through which care and educational support is provided to an orphaned child.

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