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Family is a basic social unit, a subject of rights and duties.[1] This enunciation, included in no. 46 of the post-synodal apostolic exhortation *Familiaris Consortio* — never ageing and still the most important post-conciliar document of the papal *de matrimonio ac familia* magisterium[2] — precedes a well-known announcement: the Holy See will undertake the work of deepening the issues in question and will prepare the Char-

[1] John Paul II: *Apostolic exhortation "Familiaris consortio"* (November 22, 1981) [further: FC], n. 46.

[2] "In his Apostolic Exhortation Familiaris consortio, Pope John Paul II insisted on proposing the divine plan in the basic truths of married love and the family" — Synod of Bishops. III Extraordinary General Assembly: *Pastoral Challenges to the Family in the Context of Evangelization. Preparatory Document*. Vatican City 2013 [The Church's Teaching on the Family] — http://www.vatican.va/roman_curia/synod/documents/rc_synod_doc_20131105_iii-assemblea-sinodo-vescovi_en.html (accessed 28.12.2013); A. Pastwa: "Marriage Covenant in Catholic Doctrine: the Pastoral Constitution on the Church *Gaudium et spes* — the Apostolic Exhortation *Familiaris Consortio* — the Code of Canon Law — the Code of Canons of the Eastern Churches." *Ecumeny and Law* 1 (2013), pp. 107—112.

ter of the Rights of the Family.[3] If we were supposed to trace the successive topics of the chapter entitled "Participating in the Development of Society"[4] "The Family as the First and Vital Cell of Society," "Family Life as an Experience of Communion and Sharing," "The Social and Political Role," "Society at the Service of the Family," "The Charter of the Family Rights" — then the wide context that unveils the internal connection of the family with the society would allow us to comprehend the importance of the 1980 Synod of Bishops directive and the very decision John Paul II makes to substantialize the directive.[5] The Synodal Assembly's initiative, crowned with the announcement of the Charter of the Rights of the Family (hereinafter CRF),[6] by the Holy See in 1983, engraves its name in "bulky letters" in the idea of optimizing the cooperation between a family and the society, through mutual support and development[7].

The Introduction of the document clearly implies that it declares the truth, indicated by a righteous mind (*recta ratio*) and interpreted in the light of the Revelation: The rights included in the Charter arise from that law which is inscribed by the Creator in the heart of every human being. "In some cases they recall true and proper juridically binding norms; in other cases, they express fundamental postulates and principles for legislation to be implemented and for the development of family policy. In all cases they are a prophetic call in favour of the family institution, which must be respected and defended against all usurpation."[8] It is worth paying attention to this "manifesto" note for two reasons. The first one seems obvious: the word in question sheds light onto the rudimentary aim of the CRF. It is: "presenting to all contemporaries, be they Christian or not, a formulation — as complete and ordered as possible — of the fundamental rights that are inherent in that natural and universal society which is the family."[9]

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[3] FC, n. 46.

[4] Cf. FC, nn. 42—45.

[5] While the subject of the debate in the synodal auditorium were already the "rights of family" (14 times — listed in no. 46 of the exhortation), the justification of this Papal decision leaves no room for doubt: "Acceding to the Synod's explicit request, the Holy See will give prompt attention to studying these suggestions in depth and to the preparation of the Charter of Rights of the Family, to be presented to the quarters and authorities concerned" — FC, n. 46.

[6] The Holy See: Charter of the Rights of the Family (October 22, 1983) — http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_19831022_family-rights_en.html (accessed 28.12.2013).

[7] Cf. FC, n. 46.

[8] Pontifical Council for the Family: Charter of the Rights of the Family. Introduction — http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_20001115_family-human-rights_en.html (accessed 28.12.2013).

[9] Ibidem.

However, there is yet another reason, which in turn substantiates the interest in the subject matter meaning of the Introduction. The context of the above quoted words allows us to better understand the importance of Bishop Professor Antoni Stankiewicz's (until recently the Dean of the Roman Rota) statement, who emphasises the particular normative significance of the three points of the document's preamble.[10] Firstly, in point B we read: "the family is based on marriage, that intimate union of life in complementarity between a man and a woman which is constituted in the freely contracted and publicly expressed indissoluble bond of matrimony and is open to the transmission of life." In turn, point C states that "marriage is the natural institution with which the mission of transmitting life is exclusively entrusted." Finally, point D of the preamble renders a clear, emphatic message: "the family, a natural society, exists prior to the State or any other community, and possesses inherent rights which are inalienable."[11]

The recommendation of an outstanding canonist, included in the study, published in the commemorative Book and dedicated to the respected domain expert Professor Wojciech Góralski,[12] could not have left the arrangement of this study unaffected; it influenced it to such an extent that the subheadings of chapters 2 and 3 include words from the Preamble, which are brilliantly harmonized with the "title" articles 2 and 3 of the CRF. Therefore, the structure of the study is as follows: (1) The origins of the family: "the free and full [matrimonial] consent,"[13] (2) Exclusiveness of the "mission of transmitting life"[14]: the responsible parenthood; (3) Sovereignty of the family: protection/promotion of its "inherent rights which are inalienable."[15]

[10] A. Stankiewicz: "Familia e filiazione in diritto canonico." In: "*Finis legis Christus". Księga pamiątkowa dedykowana ks. prof. W. Góralskiemu z okazji 70 rocznicy urodzin*. Eds. J. Wroceński, J. Krajczyński, T. 1. Warszawa 2009, pp. 189—190.

[11] The Holy See: Charter of the Rights of the Family. Preamble— http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_19831022_family-rights_en.html (accessed 28.12.2013).

[12] See a flagship publication, directly referring to the title of this volume — W. Góralski: "Family as a Sovereign Institution" (pp. 91—104, in the present volume).

[13] CRF, Article 2.

[14] CRF, Preamble C.

[15] CRF, Preamble D.

1. The origins of the family: "the free and full [matrimonial] consent"

Article 2 of the CRF is introduced by means of the following main sentence: "Marriage cannot be contracted except by free and full consent duly expressed by the spouses." A valuable development of this maxim can be found in the closing point C of Art. 2: "The spouses, in the natural complementarity which exists between man and woman, enjoy the same dignity and equal rights regarding the marriage." When it comes to the content both sentences are almost identical with the subject matter meaning of point B of the Preamble, which — in the wake of Antoni Stankiewicz's footsteps — should be acknowledged as the first essential[16] of the legal depiction of the family: "the family is based on marriage, that intimate union of life in complementarity between a man and a woman which is constituted in the freely contracted and publicly expressed indissoluble bond of matrimony and is open to the transmission of life."[17]

A more comprehensive context of the doctrinal words "the free and full [matrimonial] consent"[18] defines — which the footnote to Art. 2 suggests — a very informative passage of the *Familiaris consortio*.[19] It concerns the well-known beginning of exhortation no. 19: "The first communion is the one which is established and which develops between husband and wife: by virtue of the covenant of married life, the man and woman 'are no longer two but one flesh' and they are called to grow continually in their communion through day-to-day fidelity to their marriage promise of total mutual self-giving."[20]

What stems from the mentioned texts? Every, and first and foremost, canon law reflection over matrimony must be based on a metaphysical vision of the human being and marriage knot.[21] The acceptance of this

[16] A. Stankiewicz: "Familia e filiazione in diritto canonico...," pp. 189—189; see also D. Martin: "La Carta dei Diritti della Famiglia: le sue origini e la sua originalità." In: *La famiglia e i suoi diritti nella comunità civile e religiosa*. Roma 1987, pp. 99—107.

[17] CRF, Preamble B.

[18] CRF, Article 2.

[19] The element that attests to the importance of the mentioned document in the entire post-conciliar *de matrimonio* magisterium is statistics: while the *Gaudium et spes* constitution is quoted in the CRF 16 times, the *Familiaris consortio* exhortation as many as 41 times (in 54 footnotes).

[20] FC, n. 19; cf. Vatican Council II*: Pastoral Constitution on the Church "Gaudium et spes"* [further: GS], n. 48,1.

[21] It is difficult to overestimate John Paul II's thought provided for consideration to the Church's justice system workers in penultimate address to the Roman Rota of 2004: "an authentically juridical consideration of marriage requires a metaphysical vision of

assumption does not allow us to ignore the fundamental truth, which states that the marriage is the primary reality, towards which the personal nature of a human being existing as a person-man and a person-woman inclines. John Paul II, in the famous 2001 address to the Roman Rota, taught: "The bond is caused by consent, that is, by an act of the man's and the woman's will, but this consent actualizes a power already existing in the nature of man and woman. Thus, the indissoluble force of the bond itself is based on the natural reality of the union freely established between a man and a woman."[22] Since the "partnership of the whole of life" (*consortium totius vitae*) — as the collections of the Catholic Church's laws define matrimony: "Latin" (CIC)[23] and "Eastern" (CCEO)[24] — is embedded in nature, the capacity to enter marriage and live in it should be within reach of every human being — on account of the fact that he or she is a human being. To conclude: contracting marriage is the subject of the natural law, one of the so-called human rights, in other words the basic rights, characteristic of every human being. We are aware that the canonical legal order defines this law by the means of a notion *ius connubii*.[25]

The study of canon law owes to the outstanding experts Klaus Lüdicke[26] and Remigiusz Sobański[27] the popularization of a significant statement which stipulates that the two principles rooted in the human nature: the right to contract marriage (*ius connubii*) and the matrimonial

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the human person and of the conjugal relationship. Without this ontological foundation the institution of marriage becomes merely an extrinsic superstructure, the result of the law and of social conditioning, which limits the freedom of the person to fulfill himself or herself" — John Paul II: *Allocutio ad Rotam Romanam habita* (January 29, 2004), Acta Apostolicae Sedis [further: AAS] 96 (2004), p. 352, n. 7 (English text — http://www.vatican.va/holy_father/john_paul_ii/speeches/2004/january/documents/hf_jpii_spe_20040129_roman-rota_en.html); see more — A. Pastwa: "*Amor benevolentiae — ius responsabile*: oś interpersonalnego projektu małżeńsko-rodzinnego." In: *Miłość i odpowiedzialność — wyznaczniki kanonicznego przygotowania do małżeństwa*. Eds. A. Pastwa, M. Gwóźdź. Katowice 2012.

[22] John Paul II: *Allocutio ad Romanae Rotae tribunal* (February 1, 2001). AAS 93 (2001), p. 362, n. 5 (English text — http://www.vatican.va/holy_father/john_paul_ii/speeches/2001/documents/hf_jp-ii_spe_20010201_rota-romana_en.html).

[23] Code of Canon Law (promulgated: January 25, 1983), can. 1055 § 1.

[24] Code of Canons of the Eastern Churches (promulgated: October 18, 1990), can. 776 § 1.

[25] Cf. CIC, can. 1058; CCEO, can. 778; see also J.I. Bañares: "Comentario al c. 1058." In: *Comentario exegético al Código de Derecho canónico*. Eds. Á. Marzoa, J. Miras, R. Rodríguez-Ocaña. Vol. 3/2. Pamplona 32002, pp. 1067—1075.

[26] K. Lüdicke: *Münsterischer Kommentar zum "Codex Iuris Canonici."* Essen (Lfg. Juli 2006), Einführung vor 1095/1—2.

[27] R. Sobański: "Wyznaczniki kanonicznego prawa małżeńskiego." In: *Małżeństwo w prawie świeckim i w prawie kanonicznym*. Ed. B. Czech. Katowice 1996, p. 187.

consent (*consensus matrimonialis*), constitute pillars of the canon system of the matrimonial law; it can be straightaway added that this system solution is — in a broader vista of legal culture — an exemplar of civilization progress and the highest respect for the human dignity.[28] Only such exposition of system principles constitutes an indispensible starting point for taking up the still topical postulate to work out an authentic juridical anthropology of marriage.[29] So that there are no doubts — this thesis is worth presenting in the form of a strict supposition: the sole "program" positioning within the plane of the metaphysical axis of reflection on dual unity of the human couple (anthropological paradigm)[30] is insufficient, as one way or another the beforehand unraveling should be committed to the issue of the methodological nature. It is connected with the contemporary radical opposition of the two above-mentioned principles — which in fact manifest itself in denying the traditional *favor matrimonii* in the name of *favor libertatis* or *favor personae*.[31] Meanwhile, the teaching of popes John Paul II and Benedict XVI[32] demonstrates a mistake in such reasoning. Moreover, the teaching also serves the purpose of understanding the truth that achieving personal values (and well-being) of an individual does not "oppose" the protection of the institutional wellbeing which is the matrimony,[33] a genuine and compound reflection emerges, which in fact is *ius connubii*.[34] To some degree Benedict XVI spells it out

[28] This truth is also touched upon by the broad passage of the already mentioned address to the Roman Rota of 2001 — John Paul II: *Allocutio ad Romanae Rotae tribunal* (February 1, 2001), pp. 361—363, nn. 5—7.

[29] Benedict XVI: *Allocutio ad Tribunal Rotae Romanae in inauguratione Anni Iudicialis* (January 27, 2007). AAS 99 (2007), p. 89; cf. G. Erlebach: "Problem wymiaru antropologicznego i prawnego w rozumieniu zgody małżeńskiej." *Ius Matrimoniale* 4 (1999), pp. 9—11.

[30] A. Pastwa: "Kanonické manželství v proudu personalistické obnovy." *Studia theologica* 15/4 (2013), pp. 108—113.

[31] Cf. John Paul II: *Allocutio ad Romanae Rotae tribunal* (January 28, 2002). AAS 94 (2002), p. 344, n. 7.

[32] Cf. Ibidem; Idem: *Allocutio ad Rotam Romanam habita* (January 29, 2004), pp. 349—350, nn. 2—3; Benedict XVI: *Allocutio ad sodales Tribunalis Rotae Romanae* (January 22, 2011). AAS 103 (2011), pp. 109—110.

[33] Suffice it to say that John Paul II indicated an institutional tool for effective harmonizing: derived sometimes from *ius connubii*, sometimes from *consensus matrimonialis* — and, therefore, remaining in tension — legal instructions. This tool — a hermeneutic key for the interpretation of detailed matrimonial law regulations (especially arranging seemingly contradictory canonical norms) — is the rule of *favor matrimonii*. It is a peculiar rule of the canonical system of the marriage law referring to both of the mentioned fundamentals, a rule that expresses the inseparable nature of matrimony.

[34] See H. Franceschi: *Riconoscimento e tutela dello* "ius connubii" *nel sistema matrimoniale canonico*. Milano 2004; O. Fumagalli Carulli: *Il matrimonio canonico tra principi astratti e casi pratici*. Milano 2008, pp. 19—33.

when he states that: "The right to contract marriage presupposes that the person can and intends to celebrate it truly, that is, in the truth of its essence as the Church teaches it. No one can claim the right to a nuptial ceremony. Indeed the *ius connubii* refers to the right to celebrate an authentic marriage."[35]

A consistent clarification of the "adequate" anthropology[36] theses, offered by the afore-mentioned popes, renders a firm foundation for the reintegration of the Catholic teaching *de matrimonio*. It makes no sense to challenge the fact that *ius connubii* directly evokes promotion of these personal ethical and spiritual values, which the conciliar and post-conciliar personalism line of thinking does not connect with an abstractly perceived institution, but the matrimonial and family *communio personarum* (precisely the one from the description in no. 19 of the *Familiaris consortio*). The true image of *ius connubii* is only emphasised by the *fieri* and *facto esse* plane proximity logic of a matrimony as per the analogy: both sides of the same medal[37] — which itself is an enormous achievement of the matrimonial personalism thought (and worth adding: a sign of a departure from the old legalistic and quasi-a priory perception of matrimony). The programmatic emphasis of the person's dignity connected with this logic (together with the communion dimension embedded in its ontic structure) allows us to correctly identify the "spheres" of *ius matrimoniale*, in which John Paul II — the author of two large codifications: CIC and CCEO, planned a special legal protection of not longer an abstract institution, but the freedom of people contracting marriage.

It is even more obvious, if we accept the simple consequences of fact that the matrimonial consent: the personal *par excellence* (so rational and free) deed of love covenant — defines both the project of marital community of fate (*consortium*),[38] as well as the dynamics of a man and woman's transformation, of personal and impersonal character and realized in harmony with the project ("wife's husband" — "husband's wife"). Therefore, the matrimonial consent (literally: a voluntary, mutual [marital] consent), exposed in Art. 2 of the CRF, cannot be any longer perceived in a different way than an act of personal growth, directed on the wellbe-

[35] Benedict XVI: *Allocutio ad sodales Tribunalis Rotae Romanae* (January 22, 2011), pp. 109—110 (English text — http://www.vatican.va/holy_father/benedict_xvi/speeches/2011/january/documents/hf_ben-xvi_spe_20110122_rota-romana_en.html).

[36] Cf. John Paul II: "Discorso del Santo Padre ai docenti e studenti del Pontificio Istituto Giovanni Paolo II per Studi su Matrimonio e Familia" (May 31, 2001). *Anthropotes* 17 (2001), p. 185.

[37] Cf. A. Pastwa: "Il matrimonio: comprensione personalistica e istituzionale." *Ius Ecclesiae* 25 (2013), pp. 394—396.

[38] K. Lüdicke: *Die Nichtigerklärung der Ehe. Materielles Recht*. Beihefte zum Münsterischen Kommentar. Bd. 62. Essen 2012, pp. 35—36.

ing of the spouses, offspring, family, church and universal community.[39] It is impossible to appropriately present the true nature of the marital consent and the "partnership of the whole of life" it gives beginning to, without invoking the last sentence of Art. 2 of the CRF: "The spouses, in the natural complementarity which exists between a man and a woman, enjoy the same dignity and equal rights regarding the marriage."[40] The same thought is rendered by an important, quoted in the CRF, standard of the marital law: "Each spouse has an equal duty and right to those things which belong to the partnership of conjugal life."[41] Klaus Lüdicke rightly defines this formula of marital rights equality, as a fundamental structure[42] of the marital communion described by the Church legislator, by the means of a term *consortium*. It concerns an all-spanning community of fate, in which the mutual acceptance of the other person in his masculinity/her femininity and making the other person an inseparable companion on the shared path,[43] mean essentially the axiological confirmation of the matrimonial partner as a person, specifically — a free, equal entity and a co-author of the "the unity of the two."[44] Matrimony perceived in such way is a community of people characterized by an equal dignity and equal rights (even if those are modified by a sexual differentiation), which translates into the matrimonial life practice: co-designing, co-deciding and co-acting in everything.[45]

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[39] In this holistic perspective of matrimony (including its transcendental dimension) it is hard not the share the opinion of an outstanding Roman Rota auditor José María Serrano Ruiz: "Non si può dimenticare che il matrimonio canonico è fondamentalmente il risultato di una scelta religiosa all'interno di una comunità nella quale si è cresciuti e maturati nella fede; perciò essa non può essere indifferente al modo con cui questa fede dev'essere vissuta nella comunione di intimità che il matrimonio richiede" — J.M. Serrano Ruiz: *L'ispirazione conciliare nei principi generali del matrimonio canonico*. In: *Matrimonio canonico fra tradizione e rinnovamento. Il codice del Vaticano II*. Vol. 6. Bologna ²1991, p. 74; see also Idem: "Famiglia e pluralismo religioso: note introduttive. Presupposti e prospettive nel sistema canonico." In: *Tutela della famiglia e diritto dei minori nel codice di diritto canonico*. [Atti del XXIX Congresso Nazionale di Diritto Canonico Canonico, Trieste 7—10 Settembre 1998]. *Studi Giuridici*. Vol. 53. Città del Vaticano 2000, pp. 89—106.

[40] CRF, Article 2c.

[41] CIC, can. 1135; cf. CCEO, can. 777.

[42] K. Lüdicke: *Münsterischer Kommentar…*, 1055/18.

[43] Cf. R. Bertolino: *Matrimonio canonico e bonum coniugum. Per una lettura personalistica del matrimonio cristiano*. Torino 1995, pp. 95—97.

[44] John Paul II: *Letter to Families "Gratissimam sane"* (February 2, 1994) [further: GrS], n. 8.

[45] K. Lüdicke: "Matrimonial Consent in Light of a Personalist Concept of Marriage: On the Council's New Way of Thinking about Marriage." *Studia Canonica* 33 (1999), pp. 489—492.

2. Exclusiveness of the "mission of transmitting life": the responsible parenthood

Following Bishop Professor Antoni Stankiewicz's valuable recommendation,[46] it is right to touch upon yet another dictum, a vital one in terms of the basic rights of the family. A clear reference point, in the attempt to comprehensively approach the subject in this part of the study, is fundamentally expressed in point C of the Preamble: "marriage is the natural institution to which the mission of transmitting life is exclusively entrusted."[47] It is worth confronting this crucial rule with the sentence opening Art. 3 of the CRF, which is as follows: "The spouses have the inalienable right to found a family and to decide on the spacing of births and the number of children to be born, taking into full consideration their duties towards themselves, their children already born, the family and society, in a just hierarchy of values and in accordance with the objective moral order which excludes recourse to contraception, sterilization and abortion." Automatically an issue of methodical character arises — how to understand such statements as: "is a natural institution," "in harmony with the natural order."

It seems difficult not to agree with the theorem which stipulates that what is invaluable in deliberating over this issue is the example of the "matrimonial" lecture offered by the pope — the teacher of Personalism.[48] John Paul II's *de matrimonio et familia* teaching is where the epistemological indication of the insufficiency of the a priori sentences such as: "since that is why the nature 'tells' us"[49] sounds most audibly. This papal teaching goes out to meet the postulates of recognized authors, such as Pedro-Juan Viladrich, with a view to consistently utilizing, in the study of the institution of matrimony (and that is a particular requirement of our times), a serious and genuine anthropology of the human act, meaning of human sexuality, the nature of matrimonial consent and the very matrimony, concordant with the Magisterium, canonical tradition, as well as uniform and standing judicial decisions of the Roman Rota.[50] It means

[46] A. Stankiewicz: "Familia e filiazione in diritto canonico...," p. 190.

[47] CRF, Preamble C.

[48] I propose and substantiate this thesis in detail in the monograph: "*Przymierze miłości małżeńskiej*". *Jana Pawła II idea małżeństwa kanonicznego*. Katowice 2009.

[49] See A. Pastwa: *Istotne elementy małżeństwa. W nurcie odnowy personalistycznej*. Katowice 2007, pp. 23—31.

[50] P.-J. Viladrich: *Konsens małżeński. Sposoby prawnej oceny i interpretacji w kanonicznych procesach o stwierdzenie nieważności małżeństwa*. Trans. S. Świaczny. Warszawa 2002, p. 45.

that it is necessary to discard the "spoiled fruit" of the neo-Scholasticism in the spiritually naturalistic depictions related to the institution of matrimony, deploying a "catch-all" that suggests that the "pure" biological nature of a human being is directly normative, precisely a priori defines what is a moral obligation and what is law.

These issues hold a prominent place in the already quoted famous John Paul II's address to the Roman Rota of 2001, which bears a very meaningful title: "Marriage and the family are inseparable."[51] These are the words, among others, which Cardinal Professor Peter Erdö refers to in the commentary to the: "Pastoral Challenges for the Family in the Context of Evangelization,"[52] a Preparatory Document for the recent Synod on the Family, 5—19 October 2014. According to an outstanding Hungarian canonist, this fragment of the papal Personalism teaching allows us to better understand what the statement which claims that the marriage exists "according to natural law"[53] means. Such an opinion of the outstanding expert cannot be treated as something else but an additional encouragement to analyse this unusually interesting speech — especially in terms of the poorly examined issue: natural matrimony — the nature of matrimony.[54]

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[51] Unfortunately though, in the Polish issue of *L'Osservatore Romano*, the title word "inseparable" (*nierozdzielne*) was replaced with a — confusing in this context — word "indissoluble" (*nierozerwalne*) — Jan Paweł II: "'Małżeństwo i rodzina są nierozerwalne'. Przemówienie do pracowników i adwokatów Roty Rzymskiej" (February 1, 2001). *OsRomPol* 22/4 (2001), p. 33.

[52] See footnote 2.

[53] "The Document, therefore, assumes the existence of the created universe's call to personal freedom, assumes that the laws of nature represent the rules of how the universe functions, but that these are not without reference to and consequences for human persons' free acts. Looking to the universe or within the depth of our hearts then, we discover the Creator's face and listen to His voice that challenges us. 'The natural character of marriage is better understood when it is not separated from the family. Marriage and the family are inseparable', as Blessed John Paul II said in his address to the Roman Rota in 2001 (no. 5), 'because the masculinity and femininity of the married couple are constitutively open to the gift of children'" — P. Erdö: "Osservazioni sotto l'aspetto canonistico-pastorale sul 'documento preparatorio' della III Assemblea Generale Straordinaria del Sinodo dei Vescovi." In: *Conferenza stampa sulla preparazione della III Assemblea Generale Straordinaria del Sinodo dei Vescovi, 5 novembre 2013*, n. 3 — http://press.vatican.va/content/salastampa/en/bollettino/pubblico/2013/11/05/0722/01618.html (accessed 28.12.2013).

[54] Almost all (let us add: numerous) commentaries to this papal speech focus on the issue of the relation: natural matrimony and sacramentality — see for example G. Bertolini: "Fede, intenzione sacramentale e dimensione naturale del matrimonio. A proposito dell'Allocuzione di Giovanni Paolo II alla Rota Romana per l'Anno Giudiziario 2001." *Il diritto ecclesiastico* 112 (2001), pp. 1405—1447; M. Gas i Aixendri: "Essenza del matrimonio cristriana e rifiuto della dignità sacramentale. Riflessioni alla luce del recente discorso del Papa alla Rota." *Ius Ecclesiae* 13 (2001), pp. 122—145.

Our attention is riveted by the following passage of the speech, crucial for the proper emphasis of the aforesaid matter: "Many misunderstandings have beset the very idea of 'nature'. The metaphysical concept […] has been particularly neglected. There is a tendency to reduce what is specifically human to the cultural sphere, claiming a completely autonomous creativity and efficacy for the person, at both the individual and social levels. From this viewpoint, the natural is merely a physical, biological and sociological data to be technologically manipulated according to one's own interests."[55] It is precisely here, where the careful reader will identify a pivot of the entirety of the subject issues touched upon in this papal speech. It is dedicated to a diagnosis of a dangerous civilization phenomenon — wearing the robes of the *gender* idea[56] — the characteristic sign of which is a contrast between culture and nature. According to the pope, the digging of such ideological "ditch," which we are witnesses of, brings about deplorable consequences, namely, "deprives the culture of any objective foundation, leaving it at the mercy of will and power. This can be seen very clearly in the current attempts to present *de facto* unions, including those of homosexuals, as comparable to marriage, whose natural character is precisely denied."[57] This thread of the papal Magisterium was further developed by Benedict XVI, who in his *Caritas in veritate* encyclical indicated the sinister consequences of separating culture from the human nature. In this way "cultures can no longer define themselves within a nature that transcends them, and man ends up being reduced to a mere cultural statistic. When this happens, humanity runs new risks of enslavement and manipulation."[58]

Based upon the truth about a person and his/her sex — within the clear and firm presenting of the metaphysical *persona humana* structure — the Pope concludes his magisterial lecture with a statement: "The ordering to the natural ends of marriage — the good of the spouses and the procreation and education of offspring — is intrinsically present in masculinity and femininity. […] In this sense, the natural character of marriage is better understood when it is not separated from the family. Marriage and the family are inseparable, because the masculinity and femininity of the married couple are constitutively open to the gift of children."[59]

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[55] John Paul II: *Allocutio ad Romanae Rotae tribunal* (February 1, 2001), n. 3.

[56] See: "'Mężczyzną i niewiastą stworzył ich'. Afirmacja osoby ludzkiej odpowiedzią nauk teologicznych na ideologiczną uzurpację genderyzmu." Ed. A. Pastwa. *Studia Teologiczne i Humanistyczne* 2—3 (2012).

[57] John Paul II: *Allocutio ad Romanae Rotae tribunal* (February 1, 2001), n. 3.

[58] Benedict XVI: *Encyclical Letter "Caritas in veritate"* (June 29, 2009) [further: CV], n. 26.

[59] John Paul II: *Allocutio ad Romanae Rotae tribunal* (February 1, 2001), n. 5.

When we base the scientific *de matrimonio* analyses on an impartial (barely outlined here) anthropological paradigm, it creates a good foundation: firstly for the understanding where the exclusiveness of the matrimonial-family "mission of transmitting life" comes from, and secondly, for grasping the very conciliar roots of the idea of responsible parenthood. Within the first issue, for sure directing the thoughts towards the problem of protecting and disseminating the truth about "the unity of the two"[60] in the following aspects: ontological, axionormative and legal-canonical,[61] what proves very instructive is a sentence derived from the rotal allocution of 2001: "The scope of action for the couple and, therefore, of their matrimonial rights and duties follows from that of their being and has its true foundation in the latter. In this way, therefore, man and woman, by virtue of that most unique act of will which is marital consent, freely establish between themselves a bond prefigured by their nature."[62]

The insight into the nature of the notion "responsible parenthood" is yielded by the two first sentences of a well-known paragraph of the *Gaudium et spes* constitution: "Parents should regard as their proper mission the task of transmitting human life and educating those to whom it has been transmitted. They should realize that they are thereby cooperators with the love of God the Creator, and are, so to speak, the interpreters of that love. Thus they will fulfill their task with human and Christian responsibility, and, with docile reverence toward God, will make decisions by common counsel and effort. Let them thoughtfully take into account both their own welfare and that of their children, those already born and those which the future may bring."[63] And even if it is not the proper place to conduct — in fact a vital and legally relevant[64] — an explanation of this and further passages of the Council fathers' teaching, following the papal Magisterium, it is important to clearly establish that God inscribed in the humanity of man and woman the vocation: the capacity and responsibility of love and matrimonial-family communion.[65] So the obligation of the Church, in the service of the man and the society at large, is — referring to the "sign of the times" — affirmation of a natural (institutional)

[60] GrS, n. 8.

[61] A. Pastwa: "'Stworzył mężczyznę i niewiastę' (zamiast wstępu)." In: "'Mężczyzną i niewiastą stworzył ich'. Afirmacja…," p. 10.

[62] Ibidem.

[63] GS, n. 50, 2.

[64] I touch upon this subject more broadly in the article: "'Odpowiedzialna prokreacja' personalistyczną inkarnacją 'bonum prolis? Vir Ecclesiae deditus'." In: *Księga dla uczczenia Księdza Profesora Edwarda Góreckiego*. Ed. W. Irek. Wrocław 2011, pp. 205—226.

[65] Cf. FC, n. 11.

purposefulness of matrimony: *ordinatio ad bonum prolis* by the means of a consistent preaching of the principle of responsible parenthood.

A proper conclusion of the CRF standards analysed within this point are Benedict XVI's words, addressed to the Participants of the International Congress on the 40th Anniversary of the Encyclical *Humanae vitae*: "Concern for human life and safeguarding the person's dignity require us not to leave anything untried so that all may be involved in the genuine truth of responsible conjugal love in full adherence to the law engraved on the heart of every person."[66]

3. Sovereignty of the family: protection/promotion of its "inherent rights which are inalienable"

The agreements that were reached, consistent with the teaching of the current papal Magisterium — for instance with Benedict XVI's enunciation in the quoted *Caritas in veritate* encyclical that claims that the foundation of the society is a married couple, a man and a woman, who accept each other mutually, in distinction and in complementarity: a couple, therefore, that is open to life[67] — constitute a good reference point for the interpretation of the following CRF standards. The content of point D of the preamble emits a clear, emphatic message: "the family, a natural society, exists prior to the State or any other community, and possesses inherent rights which are inalienable." The complement of this positive message can be found in Art. 3 of the CRF: "The family has a right to assistance by society in the bearing and rearing of children. Those married couples who have a large family have a right to adequate aid and should not be subjected to discrimination."[68]

However, it is not all. What is crucial for maintaining the holistic character of the reflection conducted here is also accommodating for: a context of the negative note placed slightly earlier in the same CRF article and the "magisterial" stance already expressed in no. 46 of the apostolic exhortation *Familiaris consortio* (in the immediate vicinity of

[66] Benedict XVI: *Address to Participants in the International Congress Organized by the Pontifical Lateran University on the 40th Anniversary of the Encyclical "Humanae vitae"* (May 10, 2008) http://www.vatican.va/holy_father/benedict_xvi/speeches/2008/may/documents/hf_benxvi_spe_20080510_humanae-vitae_en.html (accessed 28.12.2013).

[67] CV, n. 15; cf. Paul VI: *Encyclical Letter "Humanae vitae"* (July 25, 1968), nn. 8—9.

[68] CRF, Article 3c.

the announcement of the intention to compile the Charter). The passage in question excerpted from the Charter is as follows: "The activities of public authorities and private organizations which attempt in any way to limit the freedom of couples in deciding about their children constitute a grave offense against human dignity and justice."[69] Words of the exhortation resound equally explicitly: "the family, which in God's plan is the basic unit of society and a subject of rights and duties before the State or any other community, finds itself the victim of society, of the delays and slowness with which it acts, and even of its blatant injustice. For this reason, the Church openly and strongly defends the rights of the family against the intolerable usurpations of society and the State."[70] The both outlined contexts: positive and negative, guide us towards the "sovereign family."[71]

The mentioned idea, which can be resolutely defined as the crowning of the post-conciliar *de matrimonio ac familia* Magisterium — conceptually (*implicite*) present in the CRF texts — acquires its full shape in the Letter to Families *Gratissimam sane* (1994). It is precisely this document in which the pope and the Church legislator depict an invaluable, also from the point of view of the canonical law, image of a twofold relation: the family and the society, the family and the Church. The depiction of the family as a community of love and life ("community of human life," "community of persons united in love"[72]), the smallest social unit and an institution fundamental to the life of society — is accompanied by a firm statement: "the family is a firmly grounded social reality. It is also, in a way entirely its own, a sovereign society."[73] A conclusion comes to mind immediately: "Every effort should be made so that the family will be recognized as the primordial and, in a certain sense 'sovereign' society! The 'sovereignty' of the family is essential for the good of society. 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."[74]

Leaving aside the twists and turns of the distinctions conducted within the scope of the teachings of the canonical family law about the rights of the family (*diritto della famiglia*) and rights of the family members (*dir-*

[69] CRF, Art. 3a.
[70] FC, n. 46.
[71] GrS, n. 17.
[72] GrS, n. 6
[73] GrS, n. 17.
[74] Ibidem.

itti di famiglia),[75] it is worth indicating a noticeable change in the legal-canonical presentation of the family. While the characteristic element for the traditional presentation is claiming that from the legal point of view matrimony and family, although connected with each other, constitute different realities,[76] the revived outlook of the Catholic Church on the matrimony-family relation, is well rendered in Swiss canonist's Gabrieli Eisenring assertion: matrimony is the first form of the family.[77]

If we were able to span the new doctrinal line of the legal-canonical depiction of the family with the realization of the "constitutional principle"[78] inscribed in can. 226 § 1 CIC[79] (and parallel in can. 407 CCEO) then we owe a lot to the perspicacity of John Paul II's thought, who in an original lecture achieved a creative agreement of two notions: "domestic Church" and "sovereign family" — notions expressing a central place of a family in the Church and the society.[80] Here, we are exposed to the firm logic of the papal discourse. If the very moment of constituting the matrimonial covenant is not only the sign of the participation of the Church in Christ's love, and if *sacramentum* spans the entire love dynamics of the matrimonial-family communion of people, then it is hard to call

[75] "In coerenza con il concetto di [diritti di famiglia — A.P.], appare chiaro che l'analisi deve vertere sui diritti e doveri reciproci dei coniugi; sui diritti e doveri dei genitori nei confronti dei figli; sui diritti e doveri dei figli verso i genitori" — P. Bianchi: "Il 'diritto di famiglia' della Chiesa." *Quaderni di Diritto Ecclesiale* 7 (1994), p. 286; cf. F.J. Castaño: "Famiglia e rapporti familiari nel diritto della Chiesa." In: *La famiglia e i suoi diritti nella comunità civile* e *religiosa. Atti del VI Colloquio Giuridico (Roma, 24—26 aprile 1986)*. Eds. T. Bertone, A. Severgnini. Roma 1987, p. 89.

[76] Emphasizing these differences refers, first and foremost, to the actual jurisdictional separation of the Church and state authority: "L'istituto matrimoniale, trattandosi dei battezzati, è di esclusiva competenza della Chiesa. […] Invece l'istituto della famiglia, sorta dal matrimonio, sotto il punto di vista giuridico cade quasi esclusivamente sotto la competenza dell'autorità civile" — U. Navarrete: "Diritto Canonico e tutela del matrimonio e della famiglia." In: *Ius in vita et in missione Ecclesiae. Acta Symposii Internationalis Iuris Canonici occurrente X anniversario promulgationis Codicis Iuris Canonici diebus 19—34 Aprilis 1993 in Civitate Vaticana celebrati*. Città del Vaticano 1994, p. 993.

[77] G. Eisenring: *Die eheliche Gemeinschaft und das Kindesverhältnis in der katholischen Rechtsordnung. Beitrag zu einem Systematisierungsversuch eines Familienrechts in der Kirche*. Freiburg—Schweiz 1992, p. 23; cf. J. Vries: "Die christliche Familie aus kanonistischer Sicht." In: *"Iuri Canonico Promovendo". Festschrift für Heribert Schmitz zum 65. Geburtstag*. Hg. W. Aymans, K.-Th. Geringer. Regensburg 1994, pp. 100—103.

[78] A. Stankiewicz: *Familia e filiazione in diritto canonico…*, p. 195.

[79] "The Christian faithful can legitimately vindicate and defend the rights which they possess in the Church in the competent ecclesiastical forum according to the norm of law."

[80] Cf. J. Carreras: "La giurisdizione della Chiesa sulle relazioni familiari." In: *La giurisdizione della Chiesa sul matrimonio e sulla famiglia*. Ed. Idem. Milano 1998, pp. 1—2.

into question the importance of the family dimension of the sacramentality of the matrimony.[81]

Hence, the fruit of matrimony is not the "abstract" *status coniugalis*, but the vivid ecclesiological reality: *Ecclesia domestica*.[82] Therefore, confirmation is bestowed upon Joan Carreras's intuition, who on the basis of John Paul II's *de familia christiana* teaching proposes the following thesis: defining the family as a "sovereign" community gives the reader a clear announcement that only the family is possible to and has the power to create authentic family relations, which are the basis for constructing the society and the Church.[83] In such a case it seems difficult not to share the opinion of Pedro-Juan Viladrich,[84] an experienced examiner of the issue, who claims that we have to do whatever is possible to make sure that the idea of a "sovereign family" finds a prominent place in the Catholic Church's doctrine.

[81] "La dimensione familiare della sacramentalità del matrimonio deve fondarsi […] su di una considerazione più completa della stessa realtà sacramentale del matrimonio, in cui appaia sempre più l'inscindibile nesso reale tra matrimonio e famiglia nell'economia della creazione, che non può non trovare totale riscontro in quella della redenzione" — C.J. Errázuriz: "La rilevanza canonica della sacramentalità del matrimonio e della sua dimensione familiare." *Ius Ecclesiae* 7 (1995), p. 565.

[82] Vatican Council II: *Dogmatic Constitution on the Church "Lumen gentium"*, n. 11,2; cf. E. Corecco: "Il matrimonio nel nuovo Codex Iuris Canonici. Osservazioni critiche." In: *Studi sulle fonti del diritto matrimoniale canonico*. Padova 1988, p. 129.

[83] J. Carreras: *La giurisdizione della Chiesa sulle relazioni familiari…*, p. 39.

[84] P.J. Viladrich: "La famiglia sovrana." *Ius Ecclesiae* 7 (1995), pp. 539—550.

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Andrzej Pastwa

The Right to Found a Family and the Right to Parenthood Remarks on Articles 2 and 3 of the Charter of the Rights of the Family

Summary

Family is a basic social unit, a subject of rights and duties. This enunciation, included in no. 46 of the post-synodal Apostolic Exhortation *Familiaris consortio* — never ageing and still the most important post-conciliar document of the papal *de matrimonio ac familia* Magisterium — precedes a well-known announcement: The Holy See will undertake the work of deepening the issues in question and will prepare the Charter of the Rights of the Family (CRF). Analyses of this study, assuming a very broad doctrinal range, refer not only to the "title" of articles 2 and 3 of the CRF, but also to points B, C, D of the document's preamble, which harmonize with their normative overtone. Therefore, the structure of the study is as follows: 1. The origins of the family: "the free and full [matrimonial] consent"; 2. Exclusiveness of the "the mission of transmitting life": the responsible parenthood; 3. Sovereignty of the family: protection/promotion of its "inherent rights which are inalienable."

Andrzej Pastwa

Droit à la fondation d'une famille et à la parentalité Remarques en marge des articles 2 et 3 de la Charte des droits de la famille

Résumé

La famille est la cellule de base de la société et le sujet des droits et des obligations. Cette énonciation, incluse dans l'Exhortation apostolique post-synodale *Familiaris consortio* (no 46) — étant toujours actuelle et restant le plus important document du magistère de pape de *matrimonio ac familia* paru dans l'après-concile — précède l'annonciation éclatante : le Saint-Siège se chargera d'approfondir la problématique mentionnée ci-dessus et d'élaborer la Charte des droits de la famille. Les analyses de la présente étude, prenant en considération un vaste contexte doctrinal, se réfèrent non seulement aux articles « éponymes », mais aussi aux points — qui harmonisent avec leur message normatif — B, C et D de la Préambule de la Charte. La structure de l'étude se présente de manière suivante : 1. À l'origine de la famille : « consentement conjugal volontaire et mutuel » ; 2. Exclusivité « de la mission de donner la vie » : parentalité responsable ; 3. Souveraineté de la famille : protection/promotion de leurs « propres droits intranférables ».

Mots clés : mariage, famille, droit canonique : conjugal et familial, Charte des droits de la famille, droit à la fondation d'une famille et à la parentalité, parentalité responsable, souveraineté de la famille

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Il diritto di costituire una famiglia ed alla genitorialità Osservazioni a margine degli artt. 2 e 3. della Carta dei Diritti della Famiglia

Sommario

La famiglia è la cellula fondamentale della società, soggetto di diritti e doveri. Tale enunciazione, inclusa nel 46 numero dell'esortazione post-sinodale *Familiaris consortio* — che continua a non invecchiare e ad essere il documento post-conciliare più importante del *magistero pontificio* de matrimonio ac familia — precede un annuncio clamoroso: la Sede Apostolica intraprenderà l'opera di approfondimento della succitata problematica ed elaborerà la Carta dei Diritti della Famiglia (CDR). Le analisi del presente studio, che considerano per principio un ampio contesto dottrinale, fanno riferimento non soltanto agli articoli, specificati nel titolo, 2. e 3. della CDR, ma anche ai punti B, C, D del Preambolo della CDR che armonizzano con la loro implicazione normativa. La struttura dello studio è di conseguenza la seguente: 1. Alle origini della famiglia: "il consenso matrimoniale volontario e reciproco"; 2. L'esclusività della "missione di trasmettere la vita": la genitorialità responsabile; 3. La sovranità della famiglia: tutela/promozione dei suoi "diritti intrinsechi, inalienabili".

Parole chiave: matrimonio, famiglia, diritto canonico matrimoniale e familiare, Carta dei Diritti della Famiglia, diritto di costituire una famiglia e alla genitorialità, genitorialità responsabile, sovranità della famiglia