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The Human and Legal Base for Protection and Support of the Family

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I am very honored to be here today, and I wish most especially to thank our hosts, His Excellency Archbishop Tomasi and his excellent staff at the Permanent Observer Mission of the Holy See to the United Nations, for this important opportunity to honor the family, to whom all of humanity is indebted and to whom the future of our world is entrusted.

I have been asked to address “the human and legal base for protection and support of the family.” I will do so from the perspective of Catholic social teaching, since I am a Catholic theologian. In addressing this important theme, I find it necessary to begin by challenging a very common presupposition of much social, political and legal thought today and one representing a tremendous threat to the future of the family. That presupposition concerns, more specifically, the relation between human rights, personal dignity and individual freedom.

Whereas human dignity and human rights were once understood as the basis of human freedom, today we all too often tend to reverse that relation, so as to base human dignity and rights upon the sovereign power of freedom, which in turn is far too often reduced to subjective interests and personal desires.

To be sure, we might acclaim the “more lively awareness of personal freedom,” which Pope John Paul II accredits for various positive phenomena characterizing the family in the early years of his pontificate, including “greater attention to the quality of interpersonal relationships,” the promotion of “the dignity of women” and “responsible procreation” as well as a heightened sense of responsibility for the education of children. At the same time, however, he mourned a certain “corruption of the idea and the experience of freedom” to which he in turn attributed “a disturbing degradation of some fundamental values.” Human freedom was, more specifically, being understood and lived as “as an autonomous power of self-affirmation, often against others, for one's own selfish well-being,” rather than “as a capacity for realizing the truth of God's plan for marriage and the family.”¹

Here, in the very heart of the family, which in turn he recognized as the heart of human civilization, John Paul II thus pointed to a confrontation between two conflicting interpretations of human freedom: “*the antithesis between individualism and personalism.*”²

¹ Pope John Paul II, *Apostolic Exhortation*, “On the Role of the Family in the Modern World,” *Familiaris Consortio* (November 22, 1981), no. 5.

² Idem, “Letter to Families,” *Gratissimam sane* (February 2, 1994), no. 14.



1. An Individualistic Understanding of Freedom

The first of these—an individualistic understanding of freedom—is, he explains, “*a freedom without responsibilities*.” As such, it is proper to utilitarian manners of thinking, which instrumentalize persons to one’s own gain and represent “a systematic and permanent threat to the family” by opposing freedom to love.

This, of course, is the notion of freedom that I pointed to above, as socially and culturally pervasive, so as to be blessed by public opinion. This blessing, in turn, leads to the confusion of what Cardinal Georges Cottier calls the idea of normal and normative.³ Hence, when certain behaviors are observed with frequency among a given population, they are regarded as suitable, or corresponding, to human nature regardless of their consequences for the social order. Within our present cultural situation, marked by rampant individualism, this means that it is considered “normal” to accord to individual consciences “the prerogative of independently determining the criteria of good and evil and then acting accordingly,” John Paul II remarks. It follows that each individual is “faced with his own truth, different from the truth of others.”⁴ The social norm has become, in other words, that of living and acting *without norms*.

The consequence of this absence of ethical and ontological norms is what theoreticians in various fields refer to as the survival of the fittest: not only from a biological perspective, as Darwin theorized, but also socially, as Thomas Hobbes would have it; politically, as we witness in various tyrannical forms of government, and morally, as is the case in utilitarianism.

“Utilitarianism is,” more specifically, John Paul II explains, “a civilization of production and of use, a civilization of ‘things’ and not of ‘persons’, a civilization in which persons are used in the same way as things are used. [...] [W]oman can become an object for man, children a hindrance to parents, the family an institution obstructing the freedom of its members.”⁵ Hence, also the astonishing contradiction between a world community acclaiming the idea of human rights—“rights inherent in every person and prior to any Constitution and State legislation”—and “a tragic repudiation of them in practice.” How, in fact, John Paul II asks, “can we reconcile these declarations with the refusal to accept those who are weak and needy, or elderly, or those who have just been conceived?”⁶

2. A Personalistic Notion of Freedom

What is lacking to much of our actual human rights theorizing is, in fact, the notion of common, or shared, goods and goals, belonging to our nature as human and thus as social. Instead, theoretical and practical individualism tends to pivot the “‘strong’ against the weak who have no choice but to submit.”⁷

³ Georges Cottier, *Défis éthiques* (Saint-Maurice, Switzerland : Editions Saint-Augustin, 1996), 90ff. Cottier is a retired theologian of the pontifical house and secretary of the International Theological Commission.

⁴ John Paul II, Encyclical Letter “*On the Splendor of Truth*,” *Veritatis Splendor* (August 6, 1993), no. 32,

⁵ Idem, *Gratissimam sane*, no. 13.

⁶ Idem, Encyclical Letter “*On the Gospel of Life*,” *Evangelium Vitae* (March 25, 1995), no. 18. This denial “is still more distressing, indeed more scandalous,” he observes, “precisely because it is occurring in a society which makes the affirmation and protection of human rights its primary objective and its boast.” (Ibid.)

⁷ Ibid., no. 19.



In contrast, and thus more positively, Pope John Paul II points to what he calls a personalistic notion of freedom. Instead of regarding freedom in a negative sense—as, for example, *freedom from* constraint or responsibility, for example—it is herein understood in the positive sense, so as to be rendered *freedom for* the other: freedom for communion, for service, for responsible action. From this perspective, far from being an end in itself, freedom is orientated at the outset to the higher good of loving communion. “*Freedom exists for the sake of love*,” John Paul II explained before his election. “[M]an longs for love more than for freedom – freedom is the means and love the end.”⁸

3. Freedom at the Service of the Family

This personalistic understanding of freedom as orientated to loving communion is, I am suggesting, foundational with respect to the defense of the family against the attacks of individualism and utilitarianism. Far from threatening human freedom, this is an invitation to protect it by rooting it within the objective context of transcendent values and antecedent realities, namely human nature and thus also the human community of the family, which is implicit to that nature *as social*. Human dignity provides, from this perspective, the basis for protecting human freedom, and this in turn implies that freedom is in service of human dignity and must submit itself to human dignity whenever the two enter into conflict.

It is, in fact, in defense of the dignity of the child and of his right to be “‘born in a family’”⁹ – to “a father and mother known to him and bound to each other by marriage”¹⁰ – that the Church defends heterosexual marriage against all tendencies to otherwise define the term in the name of individual freedom. It is, after all, this particular *communion* of persons, and it alone, that is intrinsically ordered to the procreation and education of children.¹¹

To admit that this ordering is *by nature* is particularly significant. It means that this fundamental characteristic is neither arbitrary, nor accorded by social convention or cultural practice, far less by individual freedom. Nor still is this fundamental characteristic of marriage accorded to it by the State. Rather, to admit that conjugal love is ordered to procreation and education *by nature* means that these ends belong to it in virtue of creation: that they reflect God’s purpose in creating us “male and female” (cf. Gen 1: 27).¹² To man and woman together, as husband and wife, God entrusts his gift of new life.

“A child is not something *owed* to one, but is a *gift*,” we read in the Catechism of the Catholic Church. [...]. A child may not be considered a piece of property, an idea to which an alleged ‘right to a child’ would lead. In this area, only the child possesses genuine rights: the right ‘to be the fruit of the specific

⁸ Karol Wojtyła [John Paul II], *Love and Responsibility*, translated by H. T. Willetts (San Francisco : Ignatius Press, 1981, 1993), 135-136. The Polish original was published in 1960.

⁹ The Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church* (Libreria Editrice Vaticana) (London, New York: Burns & Oates, 2004), no. 244 : “The first right of the child is to ‘be born in a real family’, a right that has not always been respected and that today is subject to new violations because of developments in genetic technology.”

¹⁰ *The Catechism of the Catholic Church*, no. 2376.

¹¹ “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” (Vatican Council II, Pastoral Constitution on the Church, *Gaudium et spes*, no. 48). Cf. *The Catechism of the Catholic Church*, no. 1652.

¹² See John Paul II, *Gratissimam sane*, no. 14.



act of the conjugal love of his parents,’ and ‘the right to be respected as a person from the moment of his conception.’”¹³

4. Marriage and the Respect of Fundamental Human Rights

With regard to the first of these rights of the child – that of being the fruit of the conjugal act of his parents – we are reminded of a common fact of nature that cannot simply be thrust aside for the sake of convenience or so-called new rights. Only the natural institution of marriage allows for the procreation of children in a manner respecting the rights and dignity of mother, father and child. To speak of marriage in the absence of its orientation to procreation and the education of children, on the other hand, is to engage in a rhetoric which seeks to create new rights by creating new entities: namely, new sorts of marriages and new sorts of families. In so doing, moreover, one endangers the natural family and the fundamental rights of children to be born within the context of a stable union between his own father and mother.

Indeed, if the State acts to recognize, protect and promote marital stability—as is currently the case throughout most of the world—it does so not in view of simply private interests, but in recognition of the contribution of natural marriage “to the general interest,” “especially [the interests] of the weakest” members of society, namely children.¹⁴

A child, in turn, is not simply a private good, but also a public, or a common, good: “a common good,” John Paul II specifies, “of the Nation to which he belongs and of the State of which he is a citizen; but in a much more concrete, unique and unrepeatable way he is a common good of his family.”¹⁵

5. The Social Dimension of Marriage as the Basis of the Protection of the Family

Marriage is thus “a relationship with a social dimension, that is unique with regard to all other relationships.”¹⁶ As the foundation of the family, which in turn is “the first and basic expression of man’s social nature,”¹⁷ it “proceeds and exceeds, in an absolute and radical way, the sovereign power of the State.”¹⁸ Indeed, in the words of The Pontifical Council for Peace and Justice, “*The family [...] does not exist for society or the State, but society and the State exist for the family.*”¹⁹ It follows that the State has no power to create the institution of marriage, upon which the family is based, nor even to “freely legislate with regard to the marriage bond” but only “to regulate its civil effects.” No legislative power can, in other words, “*abolish the natural right to marriage or modify its [...] purpose,*”

¹³ *The Catechism of the Catholic Church*, no. 2378. See also *The Compendium of the Social Doctrine of the Church*, no. 235: “The desire to be a mother or a father does not justify any ‘right to children’, whereas the rights of the unborn child are evident. The unborn child must be guaranteed the best possible conditions of existence through the stability of a family founded on marriage, through the complementarities of two persons, father and mother.”

¹⁴ The Pontifical Council for the Family, “Family, Marriage and ‘De Facto’ Unions,” no. 14.

¹⁵ John Paul II, *Gratissimam sane*, no. 11. “He is such,” John Paul II continues, “not only as an individual who is part of the multitude of humanity, but rather as ‘this individual’” (*ibid.*).

¹⁶ The Pontifical Council for Justice and Peace, *The Compendium of the Social Doctrine of the Church*, no. 227.

¹⁷ John Paul II, *Gratissimam sane*, no. 7.

¹⁸ The Pontifical Council for the Family, “Family, Marriage and ‘De Facto’ Unions,” no. 9.

¹⁹ The Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church*, no. 214.



nor its “innate and permanent characteristics,”²⁰ namely, unity, indissolubility, and openness to fertility.²¹

Civil law thus follows natural law so that the former might serve the common good and the truth of the human person, who in turn must be served by freedom, rather than instrumentalized by it. This fundamental ethical conviction meanwhile requires that we acknowledge certain transcendent values to which freedom is accountable. And this, in turn, requires that we cannot regard freedom as auto-foundational or self-referential. Freedom, rather, is itself rooted within human nature, which is *per se* rational and social. As *rational*, this nature grants to human freedom the guiding force of objective truth over relativism; for reason allows the human being to know and thus to distinguish truth from falsehood, and to likewise discern between good and evil. As *social*, this nature gives to freedom what John Paul II calls “an inherently relational dimension,”²² challenging the extreme individualism of our time.

Both of these dimensions—the rational and the social—come together in marriage, wherein “commitments and responsibilities are taken on publicly and formally,” precisely because they “are relevant for society and exigible in the juridical context,” as the pontifical council for the family rightly points out. “Two or more persons may decide to live together with, or without a sexual dimension but this cohabitation is not for that reason of public interest,” the council continues. “The public authorities can not get involved in this private choice. De facto unions are the result of *private* behavior and should remain on the *private* level. Their public recognition or equivalency to marriage, and the resulting elevation of a private interest to public interest, damages the family based on [natural] marriage,” by discriminating against it.²³

When, more specifically, the State grants marital status to gay and lesbian couples²⁴ or honors de facto unions, it simultaneously grants to these private unions the same privileges of law that it accords to public ones. In so doing, it takes on certain obligations towards these partners, who in turn do not assume “the essential obligations to society that are proper to marriage,”²⁵ namely that of bringing to birth and educating the citizens of tomorrow. We are thus faced with a question of justice, which means giving each one his due.²⁶

Still more significant to the protection and support of the family in our time, however, is the question of whether individual rights trump over human dignity. This, as I have shown, is the question of whether human dignity is regarded as rooted in human nature, wherein human freedom lies, or whether instead human freedom is a wild card in virtue of which we create ourselves and simultaneously manipulate others to our end. The answer that we give to this question will in turn determine whether our public policies will be concerned with preserving a future worthy of the person: a future which, as such, necessarily entails the preservation of the family based on marriage.

²⁰ Ibid., no. 216.

²¹ Cf. *The Catechism of the Catholic Church*, no. 1664.

²² John Paul II, *Evangelium Vitae*, no. 19.

²³ The Pontifical Council for the Family, “Family, Marriage and ‘De Facto’ Unions,” no. 11. Emphasis mine.

²⁴ This is, in fact, already the case in some countries, such as Argentina, Belgium, Canada, Denmark, Iceland, Netherlands, Norway, Portugal, Spain, South Africa, Sweden, as well as several states of the US, and it seems that France is soon to join the list.

²⁵ The Pontifical Council on the Family, “Family, Marriage and ‘De Facto’ Unions,” no. 16.

²⁶ See *ibid.*, no. 10.



To all of you who are concerned with this important work of protecting and supporting the family, be assured of my gratitude and prayers.

