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## "Common Good of Marriage and the Family" : Canonical Reflections

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

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

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

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

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

thoroughly the truth about matrimony<sup>2</sup> and family<sup>3</sup>—in the memorable passages (emanating *veritatis splendor* and leading *gaudium et spes*<sup>4</sup>), like the one from the Letter to Families *Gratissimam Sane* (1994):

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

The metaphysical vision, developed by the Creator of “theology of the body,”<sup>6</sup> invariably provides—today similarly as three decades ago—favorable conditions to “rediscover the truth, goodness, and beauty of the marriage institution.”<sup>7</sup> It is all about an “environment,” in which an individual can exist “for himself/herself” through the sincere gift of self<sup>8</sup>—and at the same time reach fulfillment as “common good”: “the common good of the whole of the society”<sup>9</sup> and “the common good of marriage and the family.”<sup>10</sup>

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

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

<sup>4</sup> Cf. Giovanni Paolo II, *Discorso nel corso dell’incontro mondiale con le famiglie* (October 8, 1994), n. 7, accessed January 27, 2015, [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/speeches/1994/october/documents/hf\\_jp-ii\\_spe\\_19941008\\_incontro-famiglie\\_it.html](http://www.vatican.va/holy_father/john_paul_ii/speeches/1994/october/documents/hf_jp-ii_spe_19941008_incontro-famiglie_it.html).

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

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

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

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

<sup>9</sup> GrS, n. 11.

<sup>10</sup> GrS, n. 10.

## *Famiglia quid dicis de te ipsa?*<sup>11</sup>

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

The discourse in the Letter to Families, conducted around the said formula ("the common good of marriage and the family") reaches its climax in the fragment, in which the "Pope of the Family"<sup>14</sup> discusses a conciliar (let us add: close to his heart<sup>15</sup>) principle<sup>16</sup> of responsible procreation/responsible parenthood.<sup>17</sup> If marriage and family bear a particular and exceptional responsibility for some common good, then this common good is the human being: a person, indented

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

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

<sup>13</sup> GrS, nn. 6–17.

<sup>14</sup> Francis, *Holy Mass and Rite of Canonization of Blesseds John XXIII and John Paul II*. Homily, accessed January 27, 2015, [http://w2.vatican.va/content/francesco/en/homilies/2014/documents/papa-francesco\\_20140427\\_omelia-canonizzazioni.html](http://w2.vatican.va/content/francesco/en/homilies/2014/documents/papa-francesco_20140427_omelia-canonizzazioni.html).

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

<sup>16</sup> See GS, nn. 50–51.

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

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

This introductory recognition is fully confirmed by a more in-depth analysis of the content of the Letter to Families *Gratissimam Sane*. The papal discourse, inscribed on the pages of the quoted document, introduces an intent recipient to the very center of the Christian anthropology (let us add: also the center of the authentic juridical anthropology of marriage<sup>20</sup>). It is suffice to trace the successive “links” in the chain of John Paul II’s original thought:

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

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

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

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

<sup>21</sup> GrS, n. 6.

<sup>22</sup> “Male and female in their physical constitution, the two human subjects, even though physically different, *share equally in the capacity to live ‘in truth and love’*. This capacity, characteristic of the human being as a person, has at the same time both a spiritual and a bodily dimension. It is also through the body that man and woman are predisposed to form a ‘communion of persons’ in marriage”—John Paul II, n. 8; see Pontifical Council for the Family, *The Truth and Meaning of Human Sexuality. Guidelines for Education within the Family*, accessed Januray 27, 2015, [http://www.vatican.va/roman\\_curia/pontifical\\_councils/family/documents/rc\\_pc\\_family\\_doc\\_08121995\\_human-sexuality\\_en.html](http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_08121995_human-sexuality_en.html).

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

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

<sup>23</sup> GrS, n. 7.

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

<sup>25</sup> GS, n. 48,1.

<sup>26</sup> GrS, n. 8.

<sup>27</sup> Ibid., n. 10.

<sup>28</sup> Ibid., n. 8.

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

<sup>30</sup> GrS, n. 10.

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

when he teaches that the genealogy of the person is inscribed in the very constitution of marriage and family. “Just as the common good of spouses is fulfilled in conjugal love, ever ready to give and receive new life, so too the common good of the family is fulfilled through the same spousal love, as embodied in the newborn child. Part of the genealogy of the person is the genealogy of the family.”<sup>32</sup> This is precisely where the deep meaning of the papal teaching is revealed. Considering the “family” nature of the matrimonial bond,<sup>33</sup> the spouses (appointed to become parents) undertake a particular responsibility for the common good of the family. Indeed, the responsible procreation/responsible parenthood<sup>34</sup>—must be perceived as a concretization of this great assignment, the measure of which is the human dignity.<sup>35</sup> Since parenthood constitutes a task of not only physical nature, but also spiritual, then the genealogy of a person—as the Pope of the Family emphasizes—is in its essence the genealogy “in God” (“and which must lead back to Him”).<sup>36</sup> In other words, “cooperating with God to call new human beings into existence means contributing to the transmission of that divine image and likeness.”<sup>37</sup>

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

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

<sup>32</sup> GrS, n. 11.

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

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

<sup>35</sup> GrS, n. 12.

<sup>36</sup> *Ibid.*, n. 10.

<sup>37</sup> *Ibid.*, n. 8.

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

possible to interpret the principles of the juridical anthropology of marriage<sup>39</sup>—determinants of an entirely-personal, communion structure of the *institutium matrimonii*. It is proven by the research findings of the already mentioned expert Carlo Caffarra, who in an another interesting article *Matrimonio e visione dell'uomo*<sup>40</sup> recognizes the criteria, which make it possible to—step by step—identify the anthropological ground plate of the institutional *consortium totius vitae*.<sup>41</sup>

One of the pillars of the Christian personalistic thought is the Second Vatican Council's proclamation: “Man, who is the only creature on earth which God willed for itself, cannot fully find himself except through a sincere gift of himself.”<sup>42</sup> What is the meaning of the conciliar message? What constitutes the first announced criterion? Man and woman are capable of that *transcendere*, and precisely, in a personal gift of love, of going beyond each other toward communion with the “second,” and as a result—not losing, by no means, the subjective integrity—“finding oneself in the gift of oneself.”<sup>43</sup> The key issue here is the possibility of establishing the real reciprocation<sup>44</sup> in marriage. Meanwhile, the Council *Gaudium et spes* constitution (1965), followed by the Code of Canon Law (1983) and Code of Canons of the Eastern Churches (1990), define marriage as a partnership (*consortium*) of the whole of life, in which a man and a woman mutually give and accept each other.<sup>45</sup> It is not coincidental that John Paul II in his deep, personalistic teaching, with such a consistence emphasized that the foundation upon which a new “marital covenant of love”<sup>46</sup> arises, cannot be anything else, but the authentic gift of a person.<sup>47</sup> It is true that a man and woman (husband and wife) as any personal subject, remain free and autonomously decide about themselves (as *personae sui iuris*). This, still, means that their essential quality is the non-transferability of their individual beings (*alteri incommunicabilis*).

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

<sup>40</sup> Carlo Caffarra, “*Matrimonio e visione dell'uomo*,” *Quaderni Studio Rotale* 2 (1987): 29–40.

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

<sup>42</sup> GS, n. 24.

<sup>43</sup> Cf. Caffarra, *Matrimonio*, 39–40.

<sup>44</sup> Cf. *Ibid.*, 40.

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

<sup>46</sup> FC, n. 11.

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

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

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

<sup>48</sup> Wojtyła, *Love and Responsibility*, 96.

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

<sup>50</sup> Wojtyła, *Love and Responsibility*, 125–26.

<sup>51</sup> Cf. Wojtyła, 85.

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

<sup>53</sup> GS, n. 48.

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

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

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

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

<sup>56</sup> *Ibid.*, n. 17.

<sup>57</sup> Cf. GrS, n. 12.

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

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

<sup>60</sup> GrS, n. 8.

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

In a mutual personal devotion to each other, the spouses—as the Vatican Council II states—achieve the tightest union: “they are no longer two but one flesh.”<sup>62</sup> So, if it is true that going beyond each other toward *communio personarum* constitutes the domain of the human spirit,<sup>63</sup> then it is also true that this communion unity “in truth and love” is realized by the husband and the wife according to an objective—unitive and procreative—meaning of their masculinity and femininity.<sup>64</sup> It is how, by expressing it in the possibly shortest way, John Paul II’s “theology of the body”<sup>65</sup> emphasizes a significant indication of the personalistic-integral vision of marriage—the third (according to Carlo Caffarra) criterion of the formation of juridical anthropology of the “partnership of the whole of life.” Following the definition of the human body as a language/sign expression of a person, comes a fully justified statement that the “language of the body” (“femininity for masculinity,” “masculinity for femininity”) is both a “substance” as well as the very constitutive essence of the matrimonial-family communion of persons.<sup>66</sup> Naturally, this premise of the appropriate anthropology—based on a fundamental assumption, which states that the human being is a unity of spirit and body<sup>67</sup>—tells us to see in the body a “sacramental sign” of the matrimonial interpersonal communion/communication.<sup>68</sup> Therefore, it is safe to say that this premise turns out to be a necessary (let us say it directly: key) complement of the image of matrimonial and family *communio personarum*—in an integral depiction: both personalistic and institutional.<sup>69</sup>

<sup>62</sup> Mt 19, 6; cf. GS, n. 48.

<sup>63</sup> Caffarra, *Matrimonio*, 31–33.

<sup>64</sup> Cf. GrS, n. 8.

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

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

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

<sup>68</sup> Caffarra, 34–35.

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

## “The Indissoluble Character of Marriage as the Basis of the Common Good of the Family”<sup>70</sup>

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

Benedict XVI gives this truth a clear expression, when addressing the Roman Rota of 2009<sup>73</sup> he makes references to the famous John Paul II’s Rotal allocations from 1987 and 1988,<sup>74</sup> proclaims man and woman’s inborn capability of marriage. Did Pope Wojtyła, in his entire teaching, not preach that the man and

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<sup>70</sup> GrS, n. 7.

<sup>71</sup> Cf. Pastwa, *Realism of Personalist Vision*, 351–54.

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

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

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

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

We can ask, therefore, where do the opinions (frequently in the bosom of the very Church), which challenge the truth, that “the law is truly interwoven with life and love as one of the intrinsic obligations of its existence,”<sup>76</sup> come from? In other words, where do the opinions that call into question precisely the realism of the personalistic canonical doctrine *de matrimonio et familia* come from? This problem is succinctly explained by the papal enunciation form the Letter to Families: “Modern rationalism does not tolerate mystery. It does not accept the mystery of man as male and female, nor is it willing to admit that the full truth about man has been revealed in Jesus Christ.”<sup>77</sup> Therefore, this peculiar anthropological pessimism is obviously a derivative of the “crisis of truth”<sup>78</sup>—precisely “defined” in *Gratissimam Sane* (in connection with the analyses conducted in the *Veritatis Splendor* encyclical<sup>79</sup> and the undertone of the *Fides et Ratio* encyclical<sup>80</sup>). Let us spell it out: individualism, settled in our contemporary postmodernist world, exceedingly expansive, all the time winning new “strongholds” in the widely understood culture, constitutes a radical negation of personalism.<sup>81</sup> A bright expression of it is the fact that the human being—in the “revolutionary” anthropological depictions promoted by the fencers of progress (usually supported by huge financial resources and the entire mass media system)<sup>82</sup>—is devoid of any reference to the

<sup>75</sup> See Pastwa, “Przymierze miłości małżeńskiej,” 92–110.

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

<sup>77</sup> GrS, n. 19.

<sup>78</sup> *Ibid.*, n. 13.

<sup>79</sup> See VS, nn. 28–83.

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

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

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

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

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

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

<sup>84</sup> Cf. RH, n. 10.

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

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

principle is the matrimonial love, which John Paul II calls the inner principle and permanent power of communion.<sup>87</sup>

It seems obvious that the acceptance of these objectives of the juridical anthropology of marriage gives life to all attempts of setting the personalistic dimension of marriage against its legal value.<sup>88</sup> If so, maybe we can go even a step further. Based upon this anthropology, faithfully adapting the conciliar thought, the character of the “irrevocability” of the personal consent<sup>89</sup> appears—explicitly!—as a direct consequence of the “personalistic norm,”<sup>90</sup> that is, a standard affirming the dignity of persons in marriage (and family). It is unnecessary to add that according to this idea—with a highlighted bond of justice (and love), so an interpersonal matrimonial relation (*habitus amoris coniugalis*<sup>91</sup>), defined in the constitutive act of a mutual gift of two persons (*actus amoris coniugalis*) in their matrimony: masculinity and femininity<sup>92</sup>—the principle of indissolubility easily “defends” itself against the accusation of inclusion from the outside (otherwise we know that such an accusation could be easily laid against the contractual idea of marriage<sup>93</sup>).

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

<sup>87</sup> FC, n. 18; Pastwa, “Przymierze miłości małżeńskiej,” 46.

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

<sup>89</sup> Cf. GS, n. 48.

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

<sup>91</sup> Cf. Pastwa, *Prawne znaczenie miłości*, 85.

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

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

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

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

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

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

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

<sup>95</sup> FC, n. 11.

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

<sup>97</sup> GS, n. 48.

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

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

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<sup>99</sup> GrS, n. 20.

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

### Résumé

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

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

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

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

#### Sommario

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

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