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# Responsible Procreation— Co-Responsibility of Spouses From Adequate Anthropology to the Legal Anthropology of Matrimony

**Abstract:** This study successfully verifies the thesis that both eponymous anthropological criteria (responsible procreation and co-responsibility of spouses), referring to the nature of *personae humanae*, have an invaluable epistemological value in the matrimonial law. Opening a wider horizon of cognition and interpretation, they become indispensable in the accurate/reliable deciding of cases concerning the invalidity of marriage. The subsequent stages of the discourse proposed here, step by step from the general guidelines of adequate anthropology to the detailed assumptions of the legal anthropology of matrimony, have very clearly confirmed the words of John Paul II that “[...] an authentically juridical consideration of marriage requires a metaphysical vision of the human person and of the conjugal relationship” (Address to the Roman Rota, 2004).

**Keywords:** institution of matrimony, theological doctrine *de matrimonio*, adequate anthropology, legal anthropology of matrimony, responsible procreation, co-responsibility of spouses

## Impulses to Have a “New Look” on the Natural Determinants of the Essence of Matrimony

In the Address to Participants at the Plenary Session of the International Theological Commission, delivered ten years ago, Benedict XVI presented a very accurate diagnosis of the deepening crisis of the institutions of matrimony and family: “the metaphysical concept of the natural law is [in the contemporary world—A.P.] almost absent, incomprehensible.<sup>1</sup> This trend has to trigger astonishment and anxiety—due to the fact that only “the natural law constitutes the true guarantee offered to each one to live [...] in the respect for his dignity as a person.”<sup>2</sup> Dedicating this thought to the members of the Commission that prepared an important document entitled: “In Search of a Universal Ethic: New Look on Natural Law” (2009),<sup>3</sup> the pope stressed the necessity and urgency of the theologians’ mission: to make the world of science, culture, and politics aware of the inalienable value which is the human being and, consequently, of the ethical and moral message it carries, which, in turn, constitutes the reference point for all possible paths of law.<sup>4</sup>

The fact that this *memento* of the great humanist and emperor of the theological thought was to a large extent intended to determine the debate of the aforementioned prominent body (indeed, already earlier, because since October 2006), is supported by clear ‘reflections’ of the new (!) illumination of the foundations of natural law, announced by the title of the document being prepared. Indeed, the recipient of the “[...] New Look on Natural Law,”<sup>5</sup> and, especially,

<sup>1</sup> Benedict XVI, “Address to Participants at the Plenary Session of the International Theological Commission” (December 5, 2008), [http://w2.vatican.va/content/benedict-xvi/en/speeches/2008/december/documents/hf\\_ben-xvi\\_spe\\_20081205\\_teologica.html](http://w2.vatican.va/content/benedict-xvi/en/speeches/2008/december/documents/hf_ben-xvi_spe_20081205_teologica.html), accessed: December 13, 2018.

<sup>2</sup> Ibid.

<sup>3</sup> International Theological Commission, “In Search of a Universal Ethic: New Look on Natural Law” (2009), [http://www.vatican.va/roman\\_curia/congregations/cfaith/cti\\_documents/rc\\_con\\_cfaith\\_doc\\_20090520\\_legge-naturale\\_pl.html](http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_con_cfaith_doc_20090520_legge-naturale_pl.html), accessed: December 13, 2018.

<sup>4</sup> Benedict XVI, “Address to Participants at the Plenary Session of the International Theological Commission” (December 5, 2008).

<sup>5</sup> Here we should agree with the opinion of John Berkman and William C. Mattison III, editors of a well-known commentary to the mentioned document: “It is worth nothing that *In Search of a Universal Ethic* is not a new look at a universal ethic, but rather a new look at the natural law.” John Berkman and William C. Mattison III, ed., *Searching for a Universal Ethic: Multidisciplinary, Ecumenical, and Interfaith Responses to the Catholic Natural Law Tradition* (Grand Rapids, MI: Wm. B. Eerdmans Publishing Co., 2014), Introduction, 2. See also Luc-Tomas Somme, “À propos du document *À la recherche d’une éthique universelle, Nouveau regard*

prepared and equipped with scientific competence, cannot feel disappointed. It is enough to mention some very interesting (and relevant) constataions of the International Theological Commission in a document from 2009.

The norm of natural justice “is not arbitrary: the requirements of justice, which flow from the natural law, are prior to the formulation and enactment of the norm.”<sup>6</sup> “Positive law must strive to carry out the norm of natural justice,” and it means that “the legislator must [meticulously—A.P.] determine what is just in concrete historical situations.”<sup>7</sup> Further on, the words worth paying attention to are: *iura (et officia) naturalia* (“what is naturally just”).<sup>8</sup> “To acknowledge these natural rights of man means to acknowledge the objective order of human relations based on the natural law.”<sup>9</sup> Finally, a statement, to some extent crowning the interesting discourse, appears: the norms of natural justice, which are the measures of human relationships, “do not have their source in the fluctuating desires of individuals, but rather in the [personal—A.P.] structure of human beings and their humanizing relations.”<sup>10</sup>

Needless to say, these and other decisions of the International Theological Commission correspond perfectly (on the principle of two sides of the same coin) with the passages of the *Veritatis Splendor* Encyclical.<sup>11</sup> Especially in the context of the issue under consideration here, it is worth following the indication of the author himself, John Paul II, who in every attempt to adequately look at

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*sur la loi naturelle.*” *Revue thomiste*, vol. 109 (2009): 639–646; Serge-Tomas Bonino, “Questions autour du document: À la recherche d’une éthique universelle. Nouveau regard sur la loi naturelle,” *Transversalités*, vol. 117, no. 1 (2011): 9–25.

<sup>6</sup> International Theological Commission, “In Search of a Universal Ethic: New Look on Natural Law” (2009), n. 89.

<sup>7</sup> *Ibid.*, n. 91. Earlier the International Theological Commission clearly explains: “The norm of natural justice is never a standard that is fixed once and for all. It results from an appreciation of the changing situations in which people live. It articulates the judgment of practical reason in its estimation of what is just. Such a norm, as the juridical expression of the natural law in the political order, thus appears as the measure of the just relations among the members of the community.” *Ibid.*, n. 90.

<sup>8</sup> *Ibid.*, n. 92.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> John Paul II, Encyclical Letter *Veritatis Splendor* (August 6, 1993). “*Veritatis splendor* (1993) is the first papal encyclical devoted exclusively to moral theology. The encyclical treats the nature and scope of human agency in light of both the natural and evangelical laws. The International Theological Commission’s (ITC) study, *In Search of a Universal Ethic: New Look on Natural Law*, considers natural law as a common component of the great wisdom traditions. The exposition is heavily weighted toward perennial anthropological and metaphysical themes. *Veritatis splendor* looks *ad intra* to the coherence of moral theology, while the ITC looks *ad extra* toward extra-ecclesial dialogue.” Cf. Russell Hittinger, “The Situation of Natural Law in Catholic Theology,” in *Searching for a Universal Ethic*, 111–112.

matrimony as a natural reality recommends<sup>12</sup> the deep content included in the subchapter of the encyclical entitled: “What the law requires is written on their hearts” (Rom 2:15). The key fragment, which we cannot omit, is worded as follows: “At this point the true meaning of the natural law can be understood: it refers to man’s proper and primordial nature, the ‘nature of the human person,’ which is *the person himself in the unity of soul and body*, in the unity of his spiritual and biological inclinations and of all the other specific characteristics necessary for the pursuit of his end.”<sup>13</sup>

At this point, a bridge can already be built between, on the one hand, the ideas of the Magisterium and the theological doctrine that have been quoted, with the general postulate to combine the guarantee of respect for the dignity of the human person and his inalienable rights with the affirmation of natural law and, on the other hand, paradigmatic incarnation of these ideas. Turning to the detailed issue marked by the title, it is appropriate to focus attention on the ‘event’ which is so civilizationally and culturally significant as far as it is connected with the creation of an elementary social cell, that is, the act of establishing a basic interpersonal relationship, marked by the canon law with the name of *matrimonium in fieri*. The explanation of the question, first of all, what are, in the legal-canonical sense, connected to this matrimonial *fieri*, the titular ‘responsible procreation’ and ‘co-responsibility of the spouses,’ and secondly, what is their connection with the key issue of this study: the legal anthropology of marriage, first meets the papal lecture on “moral principles in the transmission of human life” from 50 years ago. It is in the *Humanae Vitae* encyclical, the first authentic interpretation of the Second Vatican Council Magisterium on matrimony,<sup>14</sup> that the word ‘responsibility’—almost exclusively in a formula with ethical and moral connotations: ‘responsible parenthood’—appears ten times. It is no different than in this context, complemented by authentic “[reference to the authentic—A.P.] requirements of marital love,”<sup>15</sup> that Paul VI’s final message resounds: “For man cannot attain that true happiness for which he yearns with all the strength of his spirit, unless he keeps the laws which the Most High God has engraved in his very nature.”<sup>16</sup>

On the other hand, it is no surprise that such an oriented legal and natural reflection on the subject of marital responsibility gains a special depth in the magisterial achievements of Pope John Paul II, the teacher of personalism,<sup>17</sup>

<sup>12</sup> John Paul II, “Address to the Prelate Auditors, Officials and Advocates of the Tribunal of the Roman Rota” (February 1, 2001), n. 3, [http://w2.vatican.va/content/john-paul-ii/en/speeches/2001/february/documents/hf\\_jp-ii\\_spe\\_20010201\\_rota-romana.html](http://w2.vatican.va/content/john-paul-ii/en/speeches/2001/february/documents/hf_jp-ii_spe_20010201_rota-romana.html), accessed: December 13, 2018.

<sup>13</sup> *Veritatis Splendor*, n. 50.

<sup>14</sup> Cf. Francis, Apostolic Exhortation *Amoris Laetitia* (April 8, 2016), n. 82.

<sup>15</sup> Paul VI, Encyclical Letter *Humanae Vitae* (July 25, 1968), n. 7; cf. *Ibid.*, nn. 8–9.

<sup>16</sup> *Humanae Vitae*, n. 31.

<sup>17</sup> See John F. Crosby: “The Personalism of John Paul II as the Basis of his Approach to the Teaching of *Humanae Vitae*.” *Anthropotes*, vol. 5 (1989): 54–62.

especially in those papal documents, in which the person-centric thought (!) follows the path marked out by monumental works: *Love and Responsibility*<sup>18</sup> and *Acting Person*.<sup>19</sup> These are the unsurpassed *Familiaris Consortio* adhortation (1981)<sup>20</sup> and Letter to the families *Gratissimam Sane* (1994),<sup>21</sup> which comprehensively undertake this discourse, as evidenced by the consistent use of the term responsible parenthood (and its equivalents): in the first document—over 30 times, and in the second—over 20 times.

Taking this last lead, we are free to assume—and this hypothesis will become the subject of verification in this article—that in the lecture of the Pope of the Family,<sup>22</sup> still insufficiently recognized authoritative indications are hidden, indications which are helpful in working out “an authentic juridical anthropology of matrimony”<sup>23</sup>—if we are to use Benedict XVI’s words from the memorable (perhaps the most important<sup>24</sup>) 2007 Address to the Roman Rota. Indeed, what is worth mentioning at the very beginning is that the final part of the second to last rotal allocution of the Polish Pope (2014), which, *nota bene*, should be the subject of frequent reading and reflection of all the matrimony researchers, representatives of doctrine and ecclesiastical judicature.

It is about a fragment that shows justice as “essential dimension of [...] marriage, which is based on an intrinsically juridical reality.”<sup>25</sup> John Paul II clearly states: “[...] an authentically juridical consideration of marriage requires

<sup>18</sup> Karol Wojtyła, *Love and Responsibility*, trans. Harry T. Willetts (San Francisco: Ignatius Press, 1993).

<sup>19</sup> Cardinal Karol Wojtyła, *The Acting Person*, trans. Andrzej Potocki, ed. Anna-Teresa Tymieniecka (Dordrecht: D. Reidel Publishing. Company, 1979).

<sup>20</sup> John Paul II, Apostolic Exhortation *Familiaris Consortio* (November 22, 1981).

<sup>21</sup> John Paul II, Letter to Families *Gratissimam Sane* (February 2, 1994).

<sup>22</sup> Francis, “Homily. Holy Mass and Rite of Canonization of Blesseds John XXIII and John Paul II (April 27, 2014),” [http://w2.vatican.va/content/francesco/en/homilies/2014/documents/pa-pa-francesco\\_20140427\\_omelia-canonizzazioni.html](http://w2.vatican.va/content/francesco/en/homilies/2014/documents/pa-pa-francesco_20140427_omelia-canonizzazioni.html), accessed: December 13, 2018.

<sup>23</sup> Benedict XVI, “Address to the Members of the Tribunal of the Roman Rota” (January 27, 2007), [http://w2.vatican.va/content/benedict-xvi/en/speeches/2007/january/documents/hf\\_ben-xvi\\_spe\\_20070127\\_roman-rot.html](http://w2.vatican.va/content/benedict-xvi/en/speeches/2007/january/documents/hf_ben-xvi_spe_20070127_roman-rot.html), accessed: December 13, 2018. The very context, in which Benedict XVI’s quoted words appeared, says a lot: “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*.” Ibid.

<sup>24</sup> Cf. Andrzej Pastwa, “Code’s Standards Regarding Marriage and the Challenges of Modernity,” in *Hodie et Cras. Today and Tomorrow of the 1983 Code of Canon Law Thirty Years after Promulgation*, ed. Krzysztof Bureczak (Lublin: Wydawnictwo KUL, 2015), 40.

<sup>25</sup> John Paul II, “Address to the Members of the Tribunal of the Roman Rota for the Inauguration of the Judicial Year” (January 29, 2004), n. 7, [http://w2.vatican.va/content/john-paul-ii/en/speeches/2004/january/documents/hf\\_jp-ii\\_spe\\_20040129\\_roman-rot.html](http://w2.vatican.va/content/john-paul-ii/en/speeches/2004/january/documents/hf_jp-ii_spe_20040129_roman-rot.html), accessed: December 13, 2018.

a metaphysical vision of 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 fulfil himself or herself.”<sup>26</sup>

In order to finally display the methodology of contemplating the eponymous issues, what seems to be underestimated is the indication of the very John Paul II (we can only be surprised that in the study of canon law this ‘key’ has not been picked up yet). In the first version of his 2001 Address to the Roman Rota—accurately identified by experts as a very important magisterial study on matrimony as a natural reality<sup>27</sup>—the pope draws attention to two earlier rotal addresses, which he dedicated to the same (!) issues.<sup>28</sup> Since, in the allocutions of 1991<sup>29</sup> and 1999,<sup>30</sup> just as in the 2001 allocution, the *de natura matrimonii* reflections of the truth remain to be analyzed, namely, important components in the contemporary decoding of *ex natura personae humanae* of the image of the substance of matrimony. It is this discovery that encourages us to suggest (here, of course, in outline) a method of a comprehensive look at the foundations of the legal anthropology of marriage through the prism of the two title formulas: ‘responsible procreation’ and ‘co-responsibility of the spouses’; the formulas, which is not insignificant, have already achieved a conceptual autonomy<sup>31</sup> in the most recent study of canon law.

<sup>26</sup> Ibid.

<sup>27</sup> Cf. Carlos José Errazuriz Mackenna, “Il senso e il contenuto essenziale del *bonum coniugum*.” *Ius Ecclesiae*, vol. 22 (2010): 582.

<sup>28</sup> “I think it appropriate this morning to revisit several themes that I dwelt on in our previous meetings (cf. *Addresses to the Rota*, 28 January 1991: AAS, vol. 83, 947–953; and 21 January 1999: AAS, vol. 91, 622–627), to reaffirm the traditional teaching about the natural dimension of marriage and the family.” John Paul II, “Address to the Prelate Auditors, Officials and Advocates of the Tribunal of the Roman Rota” (February 1, 2001), n. 2.

<sup>29</sup> John Paul II, “Address to the Tribunal of the Roman Rota” (January 28, 1991), [http://w2.vatican.va/content/john-paul-ii/en/speeches/1991/january/documents/hf\\_jp-ii\\_spe\\_19910128\\_roman-rot.html](http://w2.vatican.va/content/john-paul-ii/en/speeches/1991/january/documents/hf_jp-ii_spe_19910128_roman-rot.html), accessed: December 13, 2018.

<sup>30</sup> John Paul II, “Address to the Tribunal of the Roman Rota” (January 21, 1999), [http://w2.vatican.va/content/john-paul-ii/en/speeches/1999/january/documents/hf\\_jp-ii\\_spe\\_19990121\\_rot-romana.html](http://w2.vatican.va/content/john-paul-ii/en/speeches/1999/january/documents/hf_jp-ii_spe_19990121_rot-romana.html), accessed: December 13, 2018.

<sup>31</sup> It should be enough to refer to the studies of famous canonists: José María Serrano Ruiz, “L’esclusione della prole e la sua assolutezza: il problema della paternità responsabile,” in *Prole e matrimonio canonico*, Studi Giuridici, vol. 62 (Città del Vaticano: LEV, 2003), 153–166; Piero Antonio Bonnet, “Il *bonum coniugum* come corresponsabilità degli sposi,” *Apollinaris*, vol. 83 (2010): 419–458.

## The Context of ‘Responsible Procreation’

The two excellent segments of John Paul II’s *de matrimonio* require a joint analysis in order not to lose sight of the right perspective, which guarantees (at least by assumption) the effect of the above-mentioned overall perspective. The first segment is an exception from the 1999 Address to the Roman Rota, in which the pope, strictly according to the criteria of rationality and purpose, emphasizes the truth about the natural *realitas* of marriage, on the plane of *matrimonium in fieri*:

The consent is nothing other than the conscious, *responsible* (emphasis – A.P.) assumption of a commitment through a juridical act by which, in reciprocal self-giving, the spouses promise total and definitive love to each other. They are free to celebrate marriage, after having chosen each other with equal freedom, but as soon as they perform this act, they establish a personal state in which love becomes something that is owed, entailing effects of a juridical nature as well.<sup>32</sup>

Matrimonial consent—the pope adds when referring to the famous passage of the *Humanae Vitae* encyclical—constitutes “the will for a reciprocal gift of love, of exclusive love, of indissoluble love [and] of fruitful love.”<sup>33</sup>

It is visible with the naked eye that the ‘marital’ order of justice depicted in such a way, implied by the natural law, reveals its inalienable (!) anchoring in the “personalistic norm” (K. Wojtyła, *Love and Responsibility*).<sup>34</sup> Indeed, it is not possible to affirm this elementary ethical principle *in matrimonio*, very relevant in Karol Wojtyła’s philosophical discourse,<sup>35</sup> without noticing a close connection between justice and love.<sup>36</sup> To put it directly, the “personalistic norm”

<sup>32</sup> John Paul II, “Address to the Tribunal of the Roman Rota” (January 21, 1999), n. 4.

<sup>33</sup> Ibid.

<sup>34</sup> The “personalistic norm” in its positive form states: “The person is a good towards which the only proper and adequate attitude is love” (LR, n. 41). This norm, in its negative aspect, confirms that “the person is the kind of good which does not admit of use and cannot be treated as an object of use and as such the means to an end” (Ibid.).

<sup>35</sup> Michael Waldstein, “Three Kinds of Personalism: Kant, Scheler and John Paul II,” *Forum Teologiczne*, vol. 10 (2009): 156–157; Jarosław Kupczak, *Gift and Communion: John Paul II’s Theology of the Body* (Washington, D.C.: The Catholic University of America Press, 2014), 62; see also Kevin Rickert, “Wojtyła’s Personalistic Norm: A Thomistic Analysis,” *Nova et Vetera*, vol. 7, no. 3 (2009): 653–678;

<sup>36</sup> “A person’s rightful due is to be treated as an object of love, not as an object for use. In a sense it can be said that love is a requirement of justice, just as using a person as a means to an end would conflict with justice. In fact, the order of justice is more fundamental than the order of love—and in a sense the first embraces the second inasmuch as love can be a requirement of justice. Surely it is just to love a human being or to love God, to hold a person dear” (*Love and Responsibility*, n. 42). The author of an interesting monograph rightly establishes:



acquires in the matrimony the shape of a love obligation<sup>37</sup> that expresses itself in the responsibility of the man and of the woman for the common good which is the value of the person (John Paul II, *Letter to Families*).<sup>38</sup> It is not difficult to see that the phenomenon of benevolence<sup>39</sup> reveals its potential, which in an anthropological, theological, and legal sense constitutes a real—ontically durable—foundations of this personal and interpersonal *sui iuris* reality.

Therefore, matrimony as an institution of natural law has its foundations in an authentic matrimonial love<sup>40</sup> that affirms the human person.<sup>41</sup> Marital love is rooted in the conjugal covenant of irrevocable personal consent,<sup>42</sup> that is, responsible (conscious and free) act of mutual gift of both persons. In other words, the ‘choice love’ rooted in will (*dilectio*—according to Thomas Aquinas’s definition)<sup>43</sup> reveals its entire immanence in the matrimonial “partnership of the whole of life.”<sup>44</sup> In the legal and institutional sense,<sup>45</sup> it means, not more

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“For Wojtyła, both love and justice interpenetrate the personalistic norm. [...] Justice is one aspect of love; in order to love a person (to affirm their value), one must treat them justly. However, justice is not equated with love, for love does not consist merely in being just.” Stephanie Mar Brettmann, *Theories of Justice: A Dialogue with Karol Wojtyła and Karl Barth* (Cambridge, England: James Clarke & Co, 2015), 30.

<sup>37</sup> John Paul II, “Address to the Tribunal of the Roman Rota” (January 21, 1999), n. 5; Cf. Javier Hervada, “Obligaciones esenciales del matrimonio,” *Ius Canonicum*, vol. 31 (1991): 70–71.

<sup>38</sup> *Gratissimam Sane*, n. 12.

<sup>39</sup> Cf. Wojtyła, *Love and Responsibility*, 82–84.

<sup>40</sup> See Giacomo Bertolini, “Il matrimonio come istituzione: un vincolo di giustizia in quanto verità dell’amore,” *Anthropotes*, vol. 31 (2015): 213–252; Andrzej Pastwa, “Il matrimonio: comprensione personalistica e istituzionale,” *Ius Ecclesiae*, vol. 25 (2013): 387–408.

<sup>41</sup> The famous expert on the subject matter Livio Melina defines the invaluable input of Karol Wojtyła—John Paul II in the defence and promotion of this paradigm in the face of the ever more aggressive offense of false personalism in such a way: “All’antropologia individualistica e spiritualistica, potremmo dire neo-gnostica, che in fondo disprezza il corpo e pretende di poterlo manipolare con la tecnologia, a alla concezione scadente della morale, come una serie di prescrizioni legalistiche che opprimono la libertà, ha già risposto con chiarezza e forza di pensiero la »teologia del corpo« di San Giovanni Paolo II, che offre una integrazione profonda tra persona e natura, nella prospettiva di una teologia dell’amore.” Livio Melina, “Ecologia dell’amore coniugale: l’*Humanae vitae* nella luce dell’Enciclica *Laudato si*,” *Anthropotes*, vol. 31 (2015): 265.

<sup>42</sup> Vatican Council II, Pastoral Constitution on the Church *Gaudium et Spes* (December 7, 1965), n. 48.

<sup>43</sup> STh, I–II, q. 26, a. 3; “This is the level of the *voluntas et ratio*, in which love becomes the fruit of a free and conscious choice. Thomas calls this love *dilectio* or *benevolentia*, precisely because it follows upon an *electio*. If the love of desire is an affective *passio*, the love of election is an effective choice.” Angelo Scola, *The Nuptial Mystery* (Grand Rapids, MI: Wm. B. Eerdmans Publishing Co., 2005), 64.

<sup>44</sup> *Code of Canon Law* (promulgated: January 25, 1983) [CIC], can. 1055 § 1; *Code of Canons of the Eastern Churches* (promulgated: October 18, 1990) [CCEO], can. 776 § 1.

<sup>45</sup> Cf. Javier Hervada, “Libertad, naturaleza y compromiso en la sexualidad humana,” *Persona y Derecho*, vol. 19 (1988): 106–109.



and not less, that “a love that is due”<sup>46</sup> (orig. *amore dovuto*—John Paul II’s definition) identifies—in the ‘base’ interpersonal relation,<sup>47</sup> established through *actus essentialiter amorusus*<sup>48</sup>—not only the future moral obligations of the spouses, but also the *stricte* juridical<sup>49</sup> obligations present in this act.

Thus, the ontic foundations of matrimony—in the form of direct conclusions from the metaphysical vision of the person and the matrimonial bond—have been presented. Indeed, on such and no other grounds a truly legal analysis of matrimony should be based (if we recall once again the thought of John Paul II from 2004). But that is not all. In detail, these conclusions can be formulated only within the framework of updating the paradigm of anthropological realism, which assumes a realistic perception of the human person.<sup>50</sup> It is about “healthy realism” (again Pope Wojtyła’s definition from 1997) in the understanding of the freedom of the human person—which means recognizing, on the one hand, the limits and weaknesses of the human nature burdened with sin, and, on the other hand, the potentially effective help of God’s grace in every case.

Within this optics, which is characteristic of Christian anthropology, an awareness of the following necessities is included: the necessity of future offerings and sacrifices, of internal struggle, of the struggle against one’s own weaknesses—an awareness which makes consent an act of responsibility and ultimately determines faithfulness to the undertaken matrimonial commitments.<sup>51</sup> It would, therefore, be a mistake to promote an ‘idealized’ model of interpersonal relationships in which a simple difficulty on the way to fully integrate the spouses would become incapability of assuming their marital responsibilities. The effective expression of an act

<sup>46</sup> John Paul II, “Address to the Tribunal of the Roman Rota” (January 27, 1997), n. 3, [http://w2.vatican.va/content/john-paul-ii/en/speeches/1997/january/documents/hf\\_jp-ii\\_spe\\_19970127\\_rotaromana.html](http://w2.vatican.va/content/john-paul-ii/en/speeches/1997/january/documents/hf_jp-ii_spe_19970127_rotaromana.html), accessed: December 13, 2018.

<sup>47</sup> It is about ‘base’ relations located inside the structure of justice implied by matrimonial love. Manuel Lopez Aranda, “La relación interpersonal, base del matrimonio,” in *El «consortium totius vitae»*. Curso de Derecho matrimonial y procesal canónico para profesionales del foro, vol. 7 (Salamanca: Universidad Pontificia de Salamanca, 1986), 202–203.

<sup>48</sup> Urbano Navarrete, *Structura iuridica matrimonii secundum Concilium Vaticanum II. Momentum iuridicum amoris coniugalis* (Roma: Pontificia Università Gregoriana, 1994<sup>2</sup>), 146.

<sup>49</sup> See John Paul II, “Address to the Tribunal of the Roman Rota” (January 21, 1999), n. 3; Benedict XVI, “Address to the Members of the Tribunal of the Roman Rota” (January 27, 2007).

Cf. also Andrzej Pastwa, *Prawne znaczenie miłości małżeńskiej* (Katowice: Księgarnia Św. Jacka, 1999).

<sup>50</sup> “The personalist aspect of Christian marriage implies an integral vision of man which, in the light of faith, takes up and confirms whatever we can know by our natural powers. It is characterized by a sound realism in its conception of personal freedom, placed between the limits and influences of a human nature burdened by sin and the always sufficient help of divine grace.” John Paul II, “Address to the Tribunal of the Roman Rota” (January 27, 1997), n. 4.

<sup>51</sup> Cf. Wojciech Góralski, “Wzrost prawny małżeństwa i jego wymiar osobowy. Przemówienie papieża Jana Pawła II do Roty Rzymskiej 27 I 1997 r.,” *Ius Matrimoniale*, vol. 2 (1997): 98.

of irrevocable consent must not assume what most people would be unable to do.<sup>52</sup> This is by no means a pragmatic minimalism, but a realistic vision of the human person with all the dynamics of his or her development, that is, realized thanks to the “ontological equipment” (talents, supernatural gifts, etc.) through the vocation of man-husband and woman-wife to make autonomous, responsible choices: with their own effort and with the help of grace.<sup>53</sup>

It should not come as a surprise that the statement presented here—in its detailed version: mainly on the basis of the 1999 Magisterium of the rotal allocution—the anthropology of matrimony, in order for it to deserve the title adjective ‘adequate,’ needs another, we might say, a key link in order to ensure in the personalistic legal depiction of marriage the representation of the complete chain of natural features of marital love, not only faithful and exclusive, but also fertile.<sup>54</sup> Jurisdictionally, it is all about the full affirmation of the principle: *lex matrimonii est lex amoris coniugalis*.<sup>55</sup>

John Paul II was surely guided by this idea when he supplemented the *de natura matrimonii* teaching of the inaugural speech of the year of judicial work in 1999 with momentous content in the aforementioned 2001 Address to the Roman Rota.

Let us be clear, it was all about focusing the attention of the recipients of the papal teaching on the key (!) contemporary category of legal anthropology of matrimony<sup>56</sup> ‘maritality,’ namely, a category that brings with it the dimension of potential fatherhood/motherhood<sup>57</sup> and thus introduces into the personal and

<sup>52</sup> See Nikolaus Schöch, *Die kirchenrechtliche Interpretation der Grundprinzipien der christlichen Anthropologie als Voraussetzung für die ehprozessrechtliche Beurteilung der psychischen Ehekonsensunfähigkeit. Eine kanonistische Studie unter besonderer Berücksichtigung der päpstlichen Allokationen und der Judikatur der Römischen Rota*, Adnotationes in ius canonicum, Bd 15 (Frankfurt am Main–Berlin–Bern–Bruxelles–New York–Wien: Peter Lang, 1999).

<sup>53</sup> John Paul II, “Address to the Tribunal of the Roman Rota” (January 27, 1997), n. 4.

<sup>54</sup> *Humanae Vitae*, n. 9.

<sup>55</sup> The meaning of this principle is as follows: *amor coniugalis* remains in a close relation with the ontic structure of human person and as such immanently defines the legal order of canonical matrimony: Javier Hervada and Pedro Lombardía, *El Derecho del Pueblo de Dios. Hacia un sistema de Derecho canónico*, vol. 3/1: *Derecho Matrimonial* (Pamplona: Ediciones Universidad de Navarra, 1973), 128–129.

<sup>56</sup> Cf. Héctor Franceschi, “Il *bonum proles* nello stato di vita matrimoniale e le conseguenze canoniche in caso di separazione o di nullità matrimoniale,” in *Prole e matrimonio*, 32–33.

<sup>57</sup> In the *feri* optics of matrimony the potential fatherhood/motherhood is perceived as an integral part of mutual personal gift of the spouses: their giving oneself to each other and acceptance of masculinity/femininity. Cf. Juan Ignacio Bañares, “Persona y sexualidad humanas: de la antropología al derecho,” in *El matrimonio y su expresión canónica ante el III milenio*. X Congreso Internacional de Derecho Canónico, ed. Pedro-Juan Viladrich, Javier Escrivá-Ivars, Juan Ignacio Bañares, and Jorge Miras (Pamplona: Ediciones Universidad de Navarra. EUNSA, 2000), 45–59; see also Héctor Franceschi and Joan Carreras, *Antropología jurídica de la sexualidad. Fundamentos para un derecho de familia* (Caracas: Centro de Educación para la Familia y el Trabajo, 2000).

interpersonal matrimonial relationship—if we may use the ‘matrix’ of interpersonal<sup>58</sup> in the description of matrimony—the context of responsible procreation.

That is why the passage derived from the mentioned rotal address is so crucial (2001):

The natural consideration of marriage shows us that husband and wife are joined precisely as sexually different persons with all the wealth, including spiritual wealth, that this difference has at the human level. Husband and wife are united as a man-person and a woman-person. The reference to the natural dimension of their masculinity and femininity is crucial for understanding the essence of marriage. The personal bond of marriage is established precisely at the natural level of the male or female mode of being a human person.<sup>59</sup>

Further on in the text, the pope emphasized a crucial dimension of fatherhood/motherhood within the mentioned maritality:

The very act of marital consent is best understood in relation to the natural dimension of the union. For the latter is the objective reference-point by which the individual lives his natural inclination. [...] It is a question of seeing whether the persons, in addition to identifying each other's person, have truly grasped the essential natural dimension of their married state, which implies, as an intrinsic requirement, fidelity, indissolubility and potential fatherhood/motherhood as goods that integrate a relationship of justice.<sup>60</sup>

That is how we come to an important moment in the contemplation on the natural determinants of the essence of matrimony, implied by the adequate anthropology, and consequently, the legal anthropology of matrimony. As John Paul II emphasizes, if “man and woman experience in themselves the natural inclination to be joined in marriage,”<sup>61</sup> then the specific program of the “partnership of the whole of life,”<sup>62</sup> created in the matrimonial consent act, has its only chance to be realized with respect for the integral truth about the human person, that is, above all with sexuality (!) as its communion<sup>63</sup> dimension—when at the beginning of the interpersonal matrimonial relationship the *ius responsabile*<sup>64</sup> lies. This last right/obligation can be safely called the nucleus of the ethical and legal determi-

<sup>58</sup> Cf. Serrano Ruiz, “L'esclusione della prole,” 154.

<sup>59</sup> John Paul II, “Address to the Prelate Auditors, Officials and Advocates of the Tribunal of the Roman Rota” (February 1, 2001), n. 5.

<sup>60</sup> *Ibid.*, n. 7.

<sup>61</sup> *Ibid.*, n. 4.

<sup>62</sup> CIC, can. 1055 § 1; CCEO, can. 776 § 1.

<sup>63</sup> Cf. Piero Antonio Bonnet, “Das Wesen der Ehe und das Bonum Coniugum – eine Perspektive,” *De processibus matrimonialibus*, vol. 6 (1999): 30–32.

<sup>64</sup> Cf. Serrano Ruiz, “L'esclusione della prole,” 162.

nants of the matrimonial covenant. Suffice it to say that in the area determined by the matrimonial purpose: to direct toward giving birth to and upbringing of children (*ordinatio ad bonum prolis, ordinatio ad familiam*), it is the element of responsibility that fully reveals its structural profile and creative potential.

Here we can already recall the concept of *procreatio responsabilis*<sup>65</sup> developed in the post-conciliar study of canon law, genetically connected with the famous formula of the Pastoral Constitution on the Church: *paternitas responsabilis*.<sup>66</sup> Let us initially note that the concept of responsible procreation does not designate moral criteria for the planning by the spouses (already in matrimony!) of offspring and their number. This formula is about determining the legally relevant opening of the spouses to procreation, in accordance with the natural purpose of matrimony. Needless to say, the first segment of the reinterpreted conciliar formula makes it possible, in the constitutive act of the matrimonial covenant—among the immanent attributes of that act: the inalienable values that lie at the structure of matrimony—to see all too clearly the fundamental value of responsibility.<sup>67</sup>

In order to understand how important is the role of the legal category of responsible procreation in the sector of the essence of matrimony as defined by the *ordinatio ad prolis generationem et educationem*,<sup>68</sup> it is necessary to recall once again the structural formation of the matrimonial *communio personarum* according to the paradigm of benevolence. First of all, this personalistic depiction of matrimony allows us to go beyond the abstract and ontologized concepts of offspring as a good in itself, which is and remains a domain of morality.<sup>69</sup> Secondly, this clarification makes it possible, on a legal plane, to state that responsible procreation must be present in the matrimonial consent act.<sup>70</sup> What is important, consensual responsibility is not only an individualized, true will to procreate *modo humano seu responsabiliter*, but becomes above all a common and communal project of spouses, defined in its essence by a paradigmatically understood ‘matrimony.’<sup>71</sup> Thus, the key words of the *Gaudium et Spes* Con-

<sup>65</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, 2011), 205–226.

<sup>66</sup> *Gratissimam Sane*, nn. 50–51.

<sup>67</sup> Cf. Serrano Ruiz, “L’esclusione della prole,” 166.

<sup>68</sup> CIC, can. 1055 § 1; CCEO, can. 776 § 1.

<sup>69</sup> Cf. Klaus Lüdicke, “Die Ehezwicke im nachkonziliaren Eherecht – Wunsch und Wirklichkeit,” *De processibus matrimonialibus*, vol. 3 (1996): 49–52.

<sup>70</sup> Cf. Serrano Ruiz, “L’esclusione della prole,” 158.

<sup>71</sup> “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. Without this openness there could not even be a good of the spouses worthy of the name.” John Paul II, “Address to the Prelate Auditors, Officials and Advocates of the Tribunal of the Roman Rota” (February 1, 2001), n. 5.

stitution regarding responsible planning of offspring: *communi consilio atque conatu* [“by common counsel and effort”],<sup>72</sup> should be treated as a ‘personalistic’ criterion, which defines the strictly legal requirement of an integrated marital co-responsibility for the birth and bringing up offspring.

It can be assumed that the importance of this finding will be best illustrated by the final statement. More than half a century after the Second Vatican Council, there should be no more doubt that in a situation where the spouse in the matrimonial consent act seriously violates the procreative (co-)responsibility, radically depriving the other party of the right to the integral—and therefore also religious/Catholic—education of offspring, thus excluding the essential element mentioned in the can. 1101 § 2 CIC and can. 824 § 2 CCEO, he or she concludes an invalid marriage.

## The Context of Co-responsibility of Spouses

In order to have a comprehensive overview of the rudiments of the legal anthropology of matrimony it seems necessary in the last part of this study—consistently following the thought of the great teacher of personalism—to shed a little more light on the above-mentioned phenomenon of co-responsibility of spouses. In the famous 2001 Address to the Roman Rota, quoted in the fifth and seventh issue of the document, John Paul II focuses his attention—invariably in the optics of a renewed understanding of nature (i.e., “nature of the human person”)<sup>73</sup>—on the causative reason of matrimony. Here, a *stricte* personal profile of consent (*consensus personalis*<sup>74</sup>) is emphasized as an act of self-determination of two people (meeting of two freedoms), an act which gives rise to marriage and family:

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<sup>72</sup> “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 fulfil their task with human and Christian responsibility, and, with docile reverence toward God, *will make decisions by common counsel and effort* [emphasis—A.P.]. 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.” *Gratissimam Sane*, n. 50.

<sup>73</sup> Cf. Errazuriz Mackenna, “Il senso e il contenuto essenziale del *bonum coniugum*,” 583.

<sup>74</sup> *Gratissimam Sane*, n. 48. Cf. Andrzej Pastwa, “*Amor benevolentiae – ius responsabile: oś interpersonalnego projektu małżeńsko-rodzinnego*,” in *Miłość i odpowiedzialność – wyznaczniki kanonicznego przygotowania do małżeństwa*, ed. Andrzej Pastwa and Monika Gwóźdź (Katowice: Wydawnictwo Uniwersytetu Śląskiego, 2013), 25–26.

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. [...] The very act of marital consent is best understood in relation to the natural dimension of the union. For the latter is the objective reference-point by which the individual lives his natural inclination. Hence the normality and simplicity of true consent.<sup>75</sup>

After all, we cannot forget, adds the pope in the 1999 rotal allocution, that this love act of consent “between two persons of equal dignity”<sup>76</sup> is always an “obligation towards the other person.”<sup>77</sup> Only when this commitment is made *in consensu* and accepted by the other party, does personal consent become marital and never loses its character again. The same issue is raised by the Holy Father in his 1991 allocution, when he emphasizes several times the truth about the equal *ex natura* dignity of man (husband) and woman (wife) and the resulting equality of their rights in matrimony.<sup>78</sup>

If, therefore, the structure and dynamics of the *maritality*<sup>79</sup> appears first of all in the gender-determined dialectic of ‘me’ and ‘you’—that is, in the mutual complementation of the betrothed/spouses on the grounds of bipolar differences and the complementarity of their nature, then in the defined—the same way by nature<sup>80</sup>—horizon of mutual personal responsibility<sup>81</sup> it is the affirmation of the person’s values that comes to the foreground.<sup>82</sup> In the latter case, it is a consensual project of opening the betrothed/spouses to dialogue and integration, towards the realization of their good (personal perfection) and the good of their children.

We thus may ask what it means that a concrete ‘matrimonial’ project harmoniously reproduces the natural relational structure: the structure of justice. At the elementary level the answer is self-imposed: the individual ‘I’ expresses the will to be united into a unitary ‘we’<sup>83</sup>—but always (!) with mutual respect for dignity, autonomy, and subjective powers concerning the community of matrimonial life.

<sup>75</sup> John Paul II, “Address to the Prelate Auditors, Officials and Advocates of the Tribunal of the Roman Rota” (February 1, 2001), n. 5.

<sup>76</sup> John Paul II, “Address to the Tribunal of the Roman Rota” (January 21, 1999), n. 3.

<sup>77</sup> Ibid.

<sup>78</sup> John Paul II, “Address to the Tribunal of the Roman Rota” (January 28, 1991), nn. 5–6.

<sup>79</sup> Cf. Errazuriz Mackenna, “Il senso e il contenuto essenziale del *bonum coniugum*,” 582–583.

<sup>80</sup> Here it is worth reminding: it is about “the ‘nature of the human person,’ which is *the person himself in the unity of soul and body*, in the unity of his spiritual and biological inclinations and of all the other specific characteristics necessary for the pursuit of his end.” *Veritatis Splendor*, n. 50.

<sup>81</sup> *Matrimonium* [...] *non potest habere alium finem quam bonum personarum*. Navarrete, *Structura iuridica matrimonii*, 130.

<sup>82</sup> Cf. *Gratissimam Sane*, n. 12.

<sup>83</sup> Cf. Bonnet, “Il *bonum coniugum* come corresponsabilità,” 435.

In this way, we gain one more, perhaps the best explanation of why the *Gaudium et Spes* Constitution, and consequently the post-conciliar papal Magisterium, connects the project and updating of the natural orientation of each specific *community of entire life* towards the good of the spouses and the good of the offspring with the potential causative power of benevolence. Indeed, the love act of covenant, ontically orienting the betrothed/spouses towards the realization of the good of the person (spouse, child), indicates the basic structural element of the matrimonial community of fate (*consortium*). It is a ‘community’ with a personalistic qualifier, in the form of the principle of equality of marital rights.<sup>84</sup>

It is not difficult to guess what effect a radical questioning by either side of the benevolence will have at the time of the constituting the matrimony. Whoever, in a matrimonial consent act, reserves the right to carry out his will unilaterally, with extreme disregard for the other person’s position (or planning to act against his will), that is, refuses to allow the spouse to co-decide on an equal footing: *if* and *how*, with a scope of a necessary minimum to direct ‘community of the entire life’ towards the purpose of matrimony: the good of the spouses or the good of the offspring, excludes an essential element of ‘community’ and therefore concludes an invalid matrimony.<sup>85</sup>

## Conclusions

To sum up, we can consider it a true thesis that both presented anthropological criteria, referring to the nature of *personae humanae*, have an invaluable epistemological value in the matrimonial law. Opening a wider horizon of cognition and interpretation, they become indispensable in the accurate/reliable deciding of cases concerning the invalidity of marriage. The subsequent stages of the discourse proposed here, step by step from the general guidelines of adequate anthropology to the detailed assumptions of the legal anthropology of matrimony, have very clearly confirmed the words of John Paul II that “[...] an authentically juridical consideration of marriage requires a metaphysical vision of the human person and of the conjugal relationship.”<sup>86</sup>

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<sup>84</sup> Cf. Klaus Lüdicke, “Matrimonial Consent in Light of a Personalist Concept of Marriage: On the Council’s New Way of Thinking about Marriage.” *Studia Canonica*, vol. 33 (1999): 501.

<sup>85</sup> Por. Norbert Lüdecke, “Der Ausschluss des *bonum coniugum*. Ein Ehenichtigkeitsgrund mit Startschwierigkeiten,” *De processibus matrimonialibus*, vol. 2 (1995): 179–182.

<sup>86</sup> John Paul II, “Address to the Members of the Tribunal of the Roman Rota for the Inauguration of the Judicial Year” (January 29, 2004), n. 7.



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## Procréation responsable – coresponsabilité des époux De l’anthropologie adéquate à l’anthropologie juridique du mariage

### Résumé

Cette étude vérifie la thèse selon laquelle les deux critères anthropologiques parus dans l’intitulé (procréation responsable, coresponsabilité des époux), se référant à la nature de *personae*

*humanae*, ont une valeur épistémologique inestimable en droit du mariage. En effet, ouvrant un horizon cognitif et interprétatif plus large, ces deux critères sont désormais indispensables à l'évaluation exacte / fiable / correcte des juges en cas de nullité du mariage. Etape par étape, le discours proposé ici à partir des lignes directrices générales d'une anthropologie adéquate jusqu'aux hypothèses détaillées de l'anthropologie juridique du mariage, confirme clairement les propos de Jean-Paul II, selon qui «[...] une analyse véritablement juridique du mariage doit être fondée sur une vision métaphysique de l'homme et du lien conjugal» (Discours à la Rota romaine, 2004).

Mots-clés: institution du mariage, doctrine théologique de *matrimonio*, anthropologie adéquate, anthropologie juridique du mariage, procréation responsable, coresponsabilité des époux

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### Procreazione responsabile – coresponsabilità degli sposi Dall'antropologia adeguata all'antropologia giuridica del matrimonio

#### Sommario

Il presente studio verifica la tesi che entrambi i criteri antropologici inclusi nel titolo (procreazione responsabile, coresponsabilità degli sposi), riferiti alla natura di *personae humanae*, hanno un valore epistemologico inestimabile nel diritto matrimoniale. Questo perché aprendo un orizzonte cognitivo e interpretativo più ampio, sono oggi indispensabili nella valutazione giuridica corretta / attendibile nei casi di nullità di matrimonio. Le parti successive del discorso qui proposto – passo dopo passo – dagli orientamenti generali di un'antropologia adeguata agli assunti dettagliati dell'antropologia giuridica del matrimonio, hanno chiaramente confermato le parole di Giovanni Paolo II che «[...] un'analisi veramente giuridica del matrimonio deve essere basata su una visione metafisica dell'uomo e del vincolo matrimoniale» (Discorso alla Rota Romana, 2004).

Parole chiave: istituzione del matrimonio, dottrina teologica del *matrimonio*, antropologia adeguata, antropologia giuridica del matrimonio, procreazione responsabile, coresponsabilità degli sposi