

## **Familial Right and the Ethics of Parenting**

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When we speak of human rights, we customarily refer to the freedoms of the individual person. The right to worship, to assemble, and to publish exemplify such civil liberties. Even a more social catalogue of rights, such as the right to food, shelter, and work rests upon the individual's minimal requirements for economic survival.

In this paper, I would like to explore the concept of familial rights: that is, those claims of immunity and assistance posed by the family unit. While many of these rights concern particular individuals in the family network---such as the spouse, the parent, or the child---the rights inhere in the family precisely as an integral social actor. This analysis of family rights is organized around a document from the Catholic tradition: the Vatican's Charter of the Rights of Families,<sup>1</sup> a juridical text addressed to civil authorities. Not only does this text provide a list of key familial rights; it illumines the longstanding conflict between the Vatican and elite Western opinion on the very concept of the family, a conflict that erupted at the United Nations conferences in Cairo (1993) and in Beijing (1995).

The First Article of the Charter underlines the freedom to contract marriage. "All persons have the right to the free

choice of their state of life and thus to marry and establish a family or remain single" (a.1).<sup>2</sup> Clearly, the right to marry is grounded in personal freedom. This is a vocational freedom: the power of the individual to decide his or her state of life. It presupposes the intellectual maturity and the volitional choice of the adult. Parental constraint, in the form of arranged marriages, or broader social constraint, in the form of pressure against either the married or single state, is excluded in this defense of vocational freedom as the matrix of the marital covenant.

The article, however, does not reduce the right to found a family to the simple exercise of individual freedom. The text links the right to parent ("establish a family") to the exercise of the right to marry. It is properly a spousal right, one that presupposes the existence of a marital contract---indeed, presupposes a marital covenant contracted by spouses of a certain intellectual and moral maturity.

The Third Article of the Charter specifies the right of the spouses to determine the size of their family. "The spouses have the inalienable right to found a family and to decide on the spacing of births and the number of children to be born, taking into full consideration their duties toward themselves, their children already born, the family and society, in a just hierarchy of values and in accordance with the objective moral

order which excludes recourse to contraception, sterilisation and abortion" (a.3).<sup>3</sup>

This right of the married to parenthood carries several distinctive contours. First, the right to conceive and bear children---and the related right to determine the number of children in one's family---is an "inalienable" right. In other words, this power is proper to all persons in the marital covenant. Since the state has not created this power, it may neither abridge nor abolish it in the name of a putative social good.

Second, in order to be responsibly exercised, the right must situate itself within a network of duties. An ethic of responsible parenthood emerges. To avoid arbitrariness, the decision of parents to conceive a child must take into account the physical and psychological state of the spouses, the economic condition of the family, the welfare of the present children in the family, even the socio-demographic condition of the family's region.

Third, the means to be used in this family planning, as well as the goals, must pass under moral scrutiny. As the subsequent article (a.4)<sup>4</sup> explains, abortion is excluded, since the right to life of each human being must be respected from the dawn of conception. The critique of sterilization and contraception rests on different grounds. Here, the action destroys

permanently or temporarily the human power of procreation. The intimate link between the unitive and procreative purposes of conjugal union is sundered. This critique of particular methods of family planning reflects the Church's broader polemic against ethical consequentialism.

In the Fifth Article, the Charter elucidates the educational rights of parents. "Since they have conferred life on their children, parents have the original, primary and inalienable right to educate them; hence, they must be acknowledged as the first and foremost educators of their children" (a.5).<sup>5</sup> Just as procreation is tied to the unitive value of conjugal intercourse, the education of children is tied to their procreation. This reflects a traditional natural-law argument that for humans, as for other animals, the begetting and raising of children constitutes a fundamental inclination.<sup>6</sup> For humans, however, the somatic-affective instinct to nurture one's young is transformed into a conscious duty to educate one's children, conducted under certain moral imperatives.

Again, the "inalienable" quality of this right clearly privileges the educational prerogatives of the parents against the encroachments of the state. While the state should provide material support to parents in order to facilitate the parents' pedagogical design for their children, it may not impose a uniform educational model upon all children nor may it

effectively abridge the parents' exercise of their educational right by placing economic burdens upon families who diverge from the educational status quo.

A subsequent article (a.7)<sup>7</sup> underscores the specifically religious rights of parents to educate their children in their theological tradition.

The Charter's adumbration of parental rights in education creates a certain ambiguity regarding the rights of children. While the Charter firmly defends the right of the child to life, to physical integrity and to general welfare, the emphasis upon the pedagogical prerogatives of parents tends to diminish any power of self-determination credited to the child or adolescent.

The Charter does not conceive family rights simply in terms of "negative" rights: that is, the immunity of parents from political interference in the exercise of their freedom to contract marriage, to procreate and to educate their children. In several articles, it specifies "positive" familial rights: that is, the family's entitlement to assistance from society, especially from civic authorities.

Article Nine elaborates upon the economic assistance which the family legitimately expects from society. This takes the form of a minimum wage (a.9a),<sup>8</sup> health and disability insurance (a.9b),<sup>9</sup> and proper support for the elderly (a.9c).<sup>10</sup>

More originally, Article Ten insists that a society's work

and remuneration must be organized in order to facilitate the domestic life of the family. Appropriate measures include family allowances to support the raising of children (a.10a)<sup>11</sup> and proper recognition and financial support for spouses who work within the home (a.10.b).<sup>12</sup>

These enumerations of the family's right to social assistance undercut any "free-market" model of the economic order. In the Charter's perspective, the economic order of the production and distribution of material goods must be subordinated to the personalist order of marital love, procreation, and the integral education of children. Both the civic code and the culture of the workplace must bear the traces of deliberate adaptation to the good of the family.

The Charter not only catalogues salient negative and positive rights of the family; it insists that the family itself must be respected as a distinctive social agent. In a lapidary formula, Article Six summarizes the argument. "The family has the right to exist and to progress as a family" (a.6.b).<sup>13</sup> The commentary on the article explains that this right to familial existence requires the state to respect "the privacy, integrity and stability of every family" (a.6.a).<sup>14</sup>

This defense of the family qua family might appear as a tautology: a family is a family is a family. But behind the cheers for the family lies a controversy. The Charter argues

that the state must provide special recognition to the family--- and to the family alone. In other words, the state should not extend recognition to other affective arrangements (such as common-law marriage, libertinage, or unmarried domestic partners) that rival covenantal marriage. Not surprisingly, part of the bitter polemic between the Catholic-Moslem coalition and the secular Western coalition at successive United Nations parleys concerned whether the key documents would privilege the social role of the family or focus upon the individual, who might opt for any number of affective unions, none decisive from the perspective of international law.

This insistence upon political recognition of the family qua family reflects a deeper polemic: the longstanding Catholic argument that society cannot be reduced to two actors, the individual and the state. The family emerges as one of the central intermediate bodies that stand between the isolated individual and the bureaucratic state. As numerous social critics, such as Nisbet,<sup>15</sup> Berger and Neuhaus<sup>16</sup> have argued, the eudaemonia of the person depends to a great extent on the vitality of the intermediate bodies, preeminently the family, to which the person belongs. The erosion of the family---its stability and its authority---cannot be a matter of indifference to the state, since the destiny of the individual citizen is tied to the fortunes of this central social cell. Moreover, both the

negative and positive rights of the family can only decline if civic authority refuses explicit recognition and defense of the one body from which society's members draw their biological and emotive life.

The Charter's conception of familial right illumines the broader issue of the ethics of parenting. This conception of familial right both grounds and restricts parental freedom.

It justifies the parental exercise of freedom on several levels. The general decision to parent a child is intrinsic to the free choice of a marital partner. The particular decision to conceive this child springs from the volition of the parents. The options concerning the child's education are subordinate to the personal creed of the parents. This concept of parental right, sharpened against the encroachments of civic authority, manifests the natural freedom of the family, which precedes and trumps the state as the fundamental social institution.

This conception of right also limits the exercise of parental freedom. The limitation is primarily deontological. The freedom to contract marriage requires the intellectual maturity to grasp and undertake the duties of the marital state.

The marital right to procreate entails a duty to procreate. This model of right rejects purely companionate marriage, in which the possibility of procreation is excluded from the onset of marriage. The right to family planning demands a recognition

of duties toward the family and society. The right to educate presupposes an adequate respect of the child's life, health, integrity, and spiritual/intellectual potential.

The limitation of parental freedom is also teleological. The means used to plan the family must respect the two overarching purposes of marriage: the procreation of children and the affective union between the spouses. Such a model of parental right excludes contraception as destructive of the procreative value and most ex-vivo methods of reproduction as destructive of the unitive value. In its most controversial theses, this model insists that each conjugal act---and not only the marriage as a whole---must respect the unitive and procreative values that constitute the purpose of marriage.

While the ethics of parenting cannot be reduced to a question of right, since questions of virtue and pneumatological gift must also inform such an ethics, it cannot ignore the problem of parental right. One of the signal contributions of the Charter is that its account of familial right systematically allies substantial parental freedom with rational maturity, with social duties, and with respect for the unitive and procreative goods that set marriage decisively apart from all other human affective associations. In so doing, it presents parental freedom as something other than sheer individual desire or a simple footnote to the mandates of the state.

### Endnotes

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1. See Holy See, "Charter of the Rights of the Family" in John Paul II, Christian Family in the Teaching of John Paul II (Homebush: St. Paul Publications, 1990), 173-186.
  2. Ibid., 178.
  3. Ibid., 179-180.
  4. See Ibid., 180.
  5. Ibid., 181.
  6. See St. Thomas Aquinas, Summa Theologica I-II; Q. XCIV; a.2.
  7. See "Charter," op. cit., 183.
  8. See Ibid., 184.
  9. See Ibid., 185.
  10. See Ibid., 185.
  11. See Ibid., 185-186.
  12. See Ibid., 186.
  13. Ibid., 183.
  14. Ibid.: 185.
  15. See Robert Nisbet, The Quest for Community (New York: Oxford, 1953).
  16. See Peter Berger and Richard John Neuhaus: To Empower People: the Role of Mediating Structures in Public Policy (Washington, D.C.: AEI, 1981).