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The Ends of Canonical Marriage in the Light of the Vatican Council II

The subject of this paper, The Ends of Canonical Marriage in the Light of the Results of the Vatican Council II, concerns a fundamental institution of the canon law which is founded on a natural and theological basis.

It is useful to recall some lines of the present canon law about marriage, in order to point out some new aspects of the Council text, which we can find in the Pastoral Constitution *De Ecclesia in mundo huius temporis*, which takes its name from its first words *Gaudium et spes* and was promulgated in the Council session of December 7, 1965.

As everyone knows the second part of this constitution deals with marriage.

In canonical marriage the only efficient cause, which is necessary and sufficient for its formation, is the will of the two persons, no intervention of the ecclesiastical authority being required.

This is a principle which can be found as the basis of every State legislation concerning marriage. Also the present Polish law in the "Family Code" of February 25, 1964 begins the first section with the words: "Marriage is contracted when a man and a woman, both present, declare [...] their will to get married." The canon law, in force since 1917, provides that "*Matrimonium facit partium consensus inter personas iure habiles legitime manifestatus; qui nulla humana potestate suppleri valet*," (can. 1081 — section 1) a consent which consists of: „*actus voluntatis, quo utraque pars tradit et acceptat ius in corpus, perpetuum et exclusivum, in ordine ad actus per se aptos ad prolis generationem*" (section 2).

The basis, therefore, is always the consent of the parties, this being the efficient cause of marriage, the cause which — as the lawgiver has established — "*nulla humana potestate suppleri valet*."

To make marriage valid, no special love between husband and wife, no mutual understanding, no noble or high purpose, is required. Canonical marriage is valid on condition that the parties, have not, by a positive act of will, repudiated either the *tradio-acceptatio* of the *ius in corpus*, or any of the three elements of progeny, fidelity and indissolubility.

As the mutual *ius in corpus* is the specific and proper nature of marriage, and the exclusive and perpetual possession of this right is the substance of conjugal society, the consequence is that, whatever the purposes of the parties may be, marriage is basically an institution at the service of life. As it is a society quite different from any other, since it makes possible and legal the transmission of life, this is the principal and sole reason for the institution.¹

This principle relates to the theological precept according to which the primary end of marriage is the procreation and education of children, and *mutuum adiutorium* and *remedium concupiscentiae* are its secondary ends (Canon 1013 C. J. C.). On this principle the Catholic tradition has always been unanimous in all its fundamental texts (In the Old Testament: *Genesis* I, 27, 28, and in the New Testament, the Gospel according to St. Matthew and St. Mark and in the epistles of St. Paul).²

St. Augustine also bases his thought on St. Paul's teachings according to which marriage is contracted for the sake of progeny.³

In the Middle Ages, St. Bonaventura and St. Thomas Aquinas, the great masters of scholastic philosophy, became the most authoritative sources for later theologians and moralists.⁴

Now, some other considerations are necessary to point out the connexion between the substance and the aims of marriage.

First of all, we must emphasize that in the theological and canonical tradition there is practically no real doctrine on the substance of marriage. In fact, all that the theological and canonical tradition has inquired

¹ As it is well known, many writings dealt with the object of the canonical consent. Among the most important ones, we may mention: P. Gasparri: *Tractatus canonicus de matrimonio*, "Tipografia Vaticana", 1932, I, Nos. 7, 8, p. 15; II. No. 905, No. 1105, p. 85 and 189; A. C. Jemolo: *Il matrimonio nel diritto canonico*, Milan 1941, p. 75; O. Giacchi: *Il consenso nel matrimonio canonico*, Milan 1950, *passim*.

² *Genesis* 2, 18; *Matth.* 19, 6 and 9; *Mc.* 10, 11; *Lc* 16, 18; *St. Paul: Eph.* 5, 25; *Id. I Cor.* 7, 9; *I Tim.* 5, 14.

³ St. Augustine: *De bono conjugali*, chap. 24 No. 32 (that is a summary of patristic thought on the ground of St. Paul's *I Tim.* 5, 14).

⁴ St. Bonaventura: *Commentari in quattuor libros Sentential Petri Lombardi*, in *IV Sent. d.* 27, a. 1, q. 2 ad 4; St. Thomas: *Summa Theologica*, III *Supplem. quaest.* 44, art. 2.

about the general doctrine of marriage concerns the aims and properties of marriage. This is the reason why the principle of the procreation and education of children has prevailed, and in consequence of a sort of identification, even if not explicit, of *procreatio et educatio prolis* with the substance of marriage.

This identification has caused an increasing reaction against the traditional doctrine, particularly in the most recent theological and moral teaching, as well as a lower value placed upon procreation and education as the primary end of marriage.

In this matter, it is not useful to say that the procreation and education of children, even if the primary end of marriage, could not be the substance of marriage itself since it is only an exterior element to which marriage is primarily directed. Really, the end of procreation and education of children, is a fundamental and integrant element in the substance of marriage, since it just consists of the social function to which the marriage is aimed.

It is worth while distinguishing between the so-called *matrimonium in fieri*, i. e. the constitutive element of marriage created by celebration, and the so-called *matrimonium in facto esse*, that is the conjugal society which finds its origin in the marriage celebrated.⁵ We are convinced that the problem of the substance of marriage can be solved only by considering the peculiar nature of conjugal society; the substance of canonical marriage must be found in the union between husband and wife, which gives rise to *conjugium*. The cause of this *conjugium* is in the expression of the consent itself, which is the starting point for the creation of conjugal society.

Let us clarify these ideas. Conjugal society, as a natural society, has ends and structure which are mainly determined by natural law; it is this very end of procreation and education of children which distinguishes the said society in comparison with any other kind of stable union between two individuals; the substance of the juridical structure of this society is clearly directed to make the two persons complementary not only from a physical and biological but also from a moral and spiritual point of view.⁶

⁵ On the aims of the canonic marriage and on the distinction between the marriage as the constitutive act of the conjugal society and the same conjugal society considered in its material substance, see S. Lener: *Il matrimonio come ordinamento giuridico*. Strutture e fine della società coniugale, in "Civiltà Cattolica", 1966, quad. 2786, p. 111.

⁶ On the conjugal society which is a real unity and not merely a union of two lives, see G. Capograssi: *Opere*, vol. III, Milan 1959, p. 208.

At the beginning of the twentieth century, some German theologians and Italian jurists denied that procreation and education of children might be the primary end of marriage and affirmed that mutual integration of the two persons had to be considered the essential end of marriage, this being more in harmony with the human and social aspects of the marriage contract.⁷

In Germany, particularly, according to Doms, the opinion has been that the real, essential and immediate aim of marriage, both general and canonical, should be found not in the procreation of children, but in *mutuum adiutorium* considered as an integration, completion and improvement of the personality of the parties, or — as Krempel said — their vital communion and physical and spiritual fusion.⁸

On this question there have been many official documents of the Church following the letter of the law (canon 1013, sec. 1, canon 1081, sec. 2, canon 1082, sec. 1) and the solemn declarations of Pius XI⁹ and Pius XII.¹⁰ The Holy See in the decree of March 30, 1944, condemned the opinions by which the procreation of children is not the primary end of marriage.¹¹

In his speech to obstetricians on October 29, 1951, Pius XII explained the genuine meaning of the above referred decree saying that "marriage

⁸ Among the Italian writers who opposed the dominant position ascribed to the *bonum prolis* as the aim of the marriage and as its constitutive element: C. Viglino: *Dell'essenza e dei limiti del diritto coniugale in ordine all'unione sessuale*, [in:] „Rassegna di studi sessuali e di eugenica”, 1925, p. 81; L. Cornaggia Medici: *Dell'essenza del matrimonio*, [in:] "Il Diritto Ecclesiastico", 1928, p. 398.

⁹ See E. Doms: *Von Sinn und Zweck der Ehe*, Breslau 1935 (French translation called *Du sens et de la fin du mariage*, Paris 1937, and Italian translation, Rome 1946). Another writer, who shows some connections with the matrimonial matter, even if he does not deal specifically with it: A. Adam: *Der Primat der Liebe*, Kevelaer 1939.

⁹ Pope Pius XI dealt with the problem in his important encyclic *Casti connubii* dated 31 December 1930. As far as the ends of the marriage are concerned, the above mentioned encyclic refers to the Roman Catechism, edited by Pope Pius V in 1556 and also called *Catechismo Tridentino* (out of the town of Trent), since it was prepared by the Council of Trent through a decree dated 11 November 1563.

¹⁰ Pope Pius XII dealt with the ends of the canonic marriage in two allocutions of his (3 October 1941 and 29 September 1949) as well as in his famous speech of October 29th, 1951.

¹¹ Declaration of the Congregation of the Holy Office, dated 1 April 1944, in *Acta Apostolica Sedis*, XXXVI, 103. On the hierarchy of the ends of marriage in the Rotal jurisprudence, see the interesting decision *Coram Winem* 22 January 1944 (in *S. R. Rotae Decisiones*, XXXVI, 55). About the *elementum amoris* see the Rotal decisions 30 December 1927 (in *S. R. Rotae Decisiones* XIX, 545) and 21 December 1951 (*ibidem*, XLIII, 789).

as a natural institution has the procreation and education of children as its primary and central end." Other ends, even if well considered by Nature, are not on the same level, but are subordinated to the primary end.¹²

The Vatican Council II has confirmed the fundamental and unchangeable principle in the Catholic doctrine that the essential aim of marriage is the procreation and education of children. The Council, however, has also exalted the mutual self-surrender of the two persons and has consequently indicated the personal integration as a no less important end of marriage, considered as a community and as a conjugal society.¹³ The organization of *conjugium* consists of the mutual integration of the two persons, one being the complement of the other, an integration perpetual by its own nature. This is not only the end of the society, but is the society itself, it is the structural relationship of the two parties naturally united to reach a social end. In any case, the procreation and education of children is established by the natural order as the primary and essential end of marriage in the natural order, indeed, this end is more important than the simple integration of the two persons.

This integration must not be confused or identified with *mutuum adjutorium*. This essential, even if secondary, end of marriage involves all the peculiar activities and duties and behaviour shared by husband and wife, which the mutual integration consists of.

However, it does not include the radical and perpetual dedication *ad invicem* of the two parties, which is personal integration.

Mutuum adjutorium is a *bonum*, an advantage which marriage offers and assures, so that it can be considered as the aim of the two contracting parties.

It is useful to point out that *mutuum adjutorium* must be distinguished from the essential end, the procreation and education of children, since

¹² Pope Pius XII in his speech to obstetricians on October 29th, 1951. About the *bonum prolis* and the hierarchy of the ends of marriage in the recent canonic and theological writings, see P. Fedele: *l'ordinatio ad prolem nel matrimonio in diritto canonico*, Milan 1962, *passim* and the wide bibliography mentioned in the same book at p. 6; V. del Giudice: *Error condicionis e fini del matrimonio*, [in:] "Raccolta di scritti in onore di A. C. Jemolo", vol. I, Milan 1963.

¹³ On the personal integration of husband and wife as a not less essential end of the marriage, considered as a conjugal society or community, see the Pastoral Constitution on *The Church in the contemporary world (Gaudium et Spes)*, Part II, chap. I, No. 47 and so on. Among the commenting writings which came out after the above mentioned constitution, see Zalba: *De dignitate matrimonii et familiae fovenda*, [in the volume:] *De Concilio Oecumenico Vaticano II Studia*, edited by Università Gregoriana, Rome 1966, extract from „*Periodica de re morali, canonica liturgica*”, 1966, fasc. 2—3. In recent jurisprudence, see the Rotal decisions *Coram Ewers*, 30 July 1966, and *Coram Felice*, 16 July 1966.

it is not a principle which concerns the final causes of the conjugal society. *Mutuum adjutorium*, in fact, is not so essential an element, that its absence could exclude the existence of marriage (we may recall, as examples, a marriage between people separated by distance and a personal separation lasting until the death of one of the parties).

The same can be said of the third end of marriage, that is to say *remedium concupiscentiae* which cannot be rightly reached outside the conjugal society. This end cannot be considered one of the essential ends of marriage, because it is either a means of reaching the truly essential end or can be included among the dutiful behaviours between husband and wife, of which — as we have said — *mutuum adjutorium* must consist.

The Vatican Council II has kept the same trend of the previous laws concerning the ends of marriage; it has given a great importance to the end of procreation and education of children, discussed in section 50 of the already mentioned *Gaudium et spes* constitution entitled *De matrimonii fecunditate*. Moreover, the Vatican Council has stressed the end of *mutuum adjutorium* and has passed the third end, i. e. *remedium concupiscentiae*, over in silence, because its achievement is practically implicit. However, the Council has not followed a strict classification of the ends of marriage, as stated in canon 1013. In fact, the first section of that canon stated a kind of order, since it confirmed the priority of the procreation and education of children, and considered *mutuum adjutorium* and *remedium concupiscentiae* as secondary ends.

To sum up, the scholastic distinction between primary and secondary ends is no longer borne in mind. Even if it is not expressly affirmed that love between husband and wife and the progress of their conjugal society is one of the ends of marriage, the value of human love has been restored and it is no longer considered in the arid way of the old canonists.

The hierarchy of ends, fixed by canon 1013, section 1, is undoubtedly important as a statement of principle, but has no juridical relevance because it is practically all summed up in the formula of canon 1081, section 2: "*mutua traditio et acceptatio juris in corpus in ordine actus per se aptos ad prolis generationem*". Evidently, the lawgiver did not want to confuse the end of marriage with its essence, as is proved not only by two separate rules included in canon 1013, section 1 and in canon 1081, section 1 of *Codex juris canonici*, but also by the teachings of Cardinal Gasparri, the great architect of the canonical codification, who always clearly distinguished between the end of marriage and its essence.

Now we must sum up the results of our analysis of the contribution of the Vatican Council to the juridical structure of canonical marriage. I think we can put it in this way: the text of the Council has developed the idea of conjugal love, since it has implicitly considered this a basic element of marriage.

We have made a fundamental distinction between *matrimonium in fieri* and *matrimonium in facto esse* and we have stressed this second element, that is to say, *matrimonium in facto esse*. This is really the dynamic aspect of the first and creative moment, that is to say, marriage *in fieri*. The second moment creates the basis for a society in which conjugal love provides the spiritual leaven.

This love, therefore, is a basic element in the structure of this society, the unity of which must be found in the very fact that in marriage husband and wife reach a mutual, vital, physical and quite free complementary relationship.

This institutional structure is really to be found in the mutual integration of the two persons. This aspect is not properly the end of the conjugal society, but is the society itself, because it is a quality which identifies this society and gives it the particular character of conjugal society.

Cele kanonicznego małżeństwa w świetle Soboru Watykańskiego II

Streszczenie

Przedmiotem artykułu są cele małżeństwa w świetle prawa kanonicznego w ujęciu Konstytucji *Gaudium et spes*, ogłoszonej na Soborze Watykańskim II.

Wedle prawa kanonicznego przyczyną sprawczą, niezbędną i wystarczającą dla powstania małżeństwa jest wola wstępujących w związek małżeński bez współdziałania jakiegokolwiek aktu ze strony władz kościelnych. Małżeństwo kanoniczne pozostaje ważne, byle tylko strona pozytywnym aktem woli nie wykluczała *traditio — acceptatio ius in corpus* ani też żadnego z jego trzech elementów, tj. potomstwa, wierności i nierozzerwalności.

Autor zwraca uwagę, że w tradycji teologicznej i kanonistycznej brak jest pełnej i właściwej doktryny o istocie małżeństwa, rozumianej jako związek pomiędzy małżonkami, prowadzący do tzw. *coniugium*, które wynika z uroczystego wyrażenia zgody. Tradycja ta — jeśli chodzi o ogólną doktrynę małżeństwa — zajmowała się badaniem tylko celów i właściwości tej instytucji, wysuwając na pierwszy plan płodzenie i wychowanie potomstwa. W konsekwencji utożsamiano całkowicie, chociaż

wprost tego nie wyrażano, *procreatio et educatio prolis* z istotą małżeństwa.

Sobór Watykański II potwierdził zasadę, że celem zasadniczym i wyróżniającym związek małżeński jest płodzenie i wychowywanie potomstwa, ale równocześnie podkreślił wzajemne oddanie się sobie małżonków, a więc zupełne związanie się osobiste (integracja), będące elementem nie mniej istotnym od małżeństwa widzianego jako wspólnota. Instytucjonalny ustrój *coniugium* opiera się na wzajemnej integracji współmałżonków, integracji z natury i przez stały wybór uzupełniających się wzajemnie.

Integracja nie może być identyfikowana z *mutuum adiutorium*, będącym celem zasadniczym, drugorzędnym, obejmującym poszczególne przejawy wykonywania obowiązków pomiędzy małżonkami i mającym stanowić konkretyzację integracji osób. To samo trzeba powiedzieć o celu trzecim, *remedium concupiscentiae*, który w sposób godny nie może być zrealizowany poza związkiem małżeńskim.

Sobór Watykański II uznał zasady poprzedniego prawodawstwa w dziedzinie celów małżeństwa, ponieważ przyznał szczególnie ważne miejsce zadaniu płodzenia i wychowania potomstwa, podkreślił cel *mutuum adiutorium*, pominął jednak milczeniem trzeci cel — *remedium concupiscentiae*, jego realizacja bowiem wiąże się *implicite* z małżeństwem.

О целях канонического брака на Ватиканском Соборе II

Резюме

В настоящей статье рассматривается трактование целей брака в каноническом праве по конституции *Gaudium et spes*, оглашенной на втором Ватиканском Соборе.

По каноническому праву необходимой и достаточной причиной для образования супружества является воля вступающих в брак, без участия какого-либо акта со стороны церковных властей. Канонический брак остается важным в том случае, если обе стороны утвердительным актом воли не исключили *traditio — acceptatio ius in corpus*, а также ни одного из его трех элементов: потомства, верности и неразлучности.

Автор обращает внимание на то, что в теологической и канонической традиции отсутствует полная и соответствующая доктрина сущности брака, понимаемой как союз между супругами, ведущий к так называемому *coniugium*, который исходит из торжественного выражения согласия. Эта традиция (если идет речь об общей доктри-

не брака) занималась исследованием только целей и свойств этого института, отсюда преимущественное значение, какое придавалось рождению и воспитанию потомства как первой цели брака. В результате полностью отождествлено, хотя прямо это не выражено, *procreatio et educatio prolis* с сущностью брака.

Второй Ватиканский Собор не только подтвердил принцип, что основным и отличающим супружеский союз фактором является рождение и воспитание потомства, но и одновременно подчеркнул взаимный духовный и физический союз супругов, следовательно полное личное соединение (интеграция), которая является не менее важным, чем супружество, трактуемое как единство. Структура института *coniugium* основывается на взаимной интеграции супругов, интеграции по натуре и путем постоянного выбора.

Интеграция не может быть идентифицирована с *mutuum adiutorium*, являющимся основной целью, но второстепенной, содержащим в себе отдельные признаки выполнения обязанностей между супругами и одновременно обязанным быть конкретизацией интеграции личности. Это же можно сказать и о третьей цели — *remedium concupiscentiae*, которая в достойный способ не может быть реализована вне супружеского союза.

Второй Ватиканский собор принял основы предыдущего законодательства в области целей брака, так как признал особенно важное место задаче рождения и воспитания потомства, подчеркнул цель *mutuum adiutorium*, однако, обошел молчанием третью цель — *remedium concupiscentiae*, так как её реализация связывает *implicite* с браком.

